

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ART-OPTIC, LTD., : 08 CV 0327 (MGC)

Plaintiff, :

SAMUEL TOMASHOVER, MERYL :
TOMASHOVER and NEWLIGHT :
EYEWEAR, LLC., :

Defendants. :

-----X

DECLARATION OF RICHARD S. SCHURIN

Richard S. Schurin, declares and states as follows:

1. I am counsel for the defendants in the above captioned action, and submit this declaration in opposition to plaintiff's motion for preliminary relief.

2. Attached hereto as Exhibit A is a true and correct copy of the STATEMENT OF CLAIM filed by plaintiff in the Israeli District Court in Tel-Aviv, Israel on or about April 30, 2007.

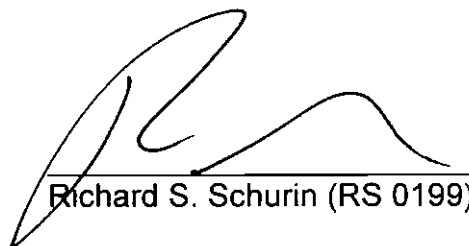
3. Attached hereto as Exhibit B is a true and correct copy of the REQUEST IN WRITING FOR ISSUING A TEMPORARY INJUNCTION AT THE PRESECE OF ONE PARTY filed by Plaintiff in the Israeli District Court in Tel-Aviv, Israel on or about April 30, 2007.

4. Attached hereto as Exhibit C is a true and correct copy of the REQUEST TO PERMIT EX PARTE PERMIT (OUTSIDE JURIDICTION) filed by Plaintiff in the Israeli District Court in Tel-Aviv, Israel on or about April 30, 2007.

5. Attached hereto as Exhibit D is a true and correct copy of the AFFIDAVIT OF EHUD BIBRING filed by Plaintiff in the Israeli District Court in Tel-Aviv, Israel on or about April 30, 2007.

6. Attached hereto as Exhibit E is a true and correct copy of the WRITTEN CLOSING ARGUMENTS OF RESPONDENTS filed by defendants in the Israeli District Court in Tel-Aviv, Israel.

7. Attached hereto as Exhibit E is a true and correct copy of the DECISION of the Israeli District Court in Tel-Aviv, Israel dated October 10, 2007.



Richard S. Schurin (RS 0199)

Dated: New York, New York
February 7, 2008

EXHIBIT A

At the District Court
In Tel-Aviv Jaffa

Tel-Aviv Jaffa District Court
A 1661/07
Art Optic Ltd. Vs. Samuel Tomashover
Date started: 30/04/07 legal procedure: standard
New case number: TA 47373-04/07

In the matter: **Art-Optic Ltd.**
Legally registered company in Israel (private company 513191148)
Of Hazamir St. 61, Kiryat Ono 55507
By its representatives Adv. Uriel Ganiher and/or Yael Amir Lev-Ari
And/or Yaron Raz and/or Nechami Mayzelish
Of David Hamelech Blvd. 12 Tel-Aviv 64953
Tel: 03-6968965 Fax: 03-6969781

The Plaintiff

- Versus -

1. **Mr. Samuel Tomashover**
2. **Mrs. Meryl Tomashover**

Sales agents whose address is –
444 East 75th Street, Suite 17C,
New York 10021, New York, USA

The Defendants

The essence of the Claim: Claim for Declarative Verdict and for an Injunction.

Amount of Claim: Can not be estimated in money.

STATEMENT OF CLAIM

The Parties

1. The plaintiff is a private company registered in Israel, which among other manufactures and distributes plastic eyeglasses' frames that are hand painted. The plaintiff is a family company owned by Mrs. Lea Bibring that

exclusively manufactures the brand "Ronit Furst" frames. Ronit Furst herself is the designer of the frames. The plaintiff manages her business affairs in Israel but exports her products to different countries in Europe as well as to the USA. The plaintiff holds the rights to use the brand "Ronit Furst" and has the copyrights to the designs, samples and drawings designed by Mrs. Ronit Furst.

2. Defendants 1 and 2 (the "Defendants") are sales agents and distributors. In 2004 they were unemployed and through a relative of theirs they contacted the plaintiff with an offer to distribute her products in the USA.

The Product

3. The product produced by the plaintiff (the "Product") is unique. The plaintiff purchases, through a special order, transparent plastic frames that are produced according to the specifications of the plaintiff. Mrs. Ronit Furst designs patterns, drawings and decorations that are painted on the frames according to her choice. It should be emphasized that the designs are originals, created by Mrs. Furst. Artists that are working for the plaintiff make precision copies, and under the supervision of Mrs. Furst, those samples and drawings are painted on all the frames.

The frames are delivered to a factory where they undergo a coating process that affixes the painting on the frame. Each frame bears the brand name "Ronit Furst" as well as an index number which likewise is written by hand on the inside of the right hand temple of the frame. Picture of the index and in it the number of frames taken out of all the products of the plaintiff is attached to the Statement of Claim and marked as **appendix A'**

4. The eyeglass brand "Ronit Furst" exists commercially since 2002, the year when the plaintiff was established. During this time it gained reputation

for the originality of the models, their beauty and quality, where the frames bearing the brand are sold at selected optical shops.

The Association

5. In 2004, when the products of the plaintiff were already sold in a number of shops in the USA, the plaintiff was approached by one of the products' distributors in Israel, Mr. David Goldwasser, who told that his relatives, the defendants, are experienced marketing people but unemployed, and proposed to the plaintiff that the defendants, together with himself, shall receive the distribution rights for the product in the USA. The plaintiff agreed and a distribution contract was signed between the parties. A correct copy of the distribution contract is attached to the Statement of Claim as a part of it thereof and marked as **appendix B'**. Shortly afterward Mr. Goldwasser withdrew, with the consent of the parties, from his share in the deal, and the defendants remain the distributors of the product in the USA according to the contract.

The Contract

6. The contract, appendix A', was signed for a period of 13 months starting December 1st, 2005. The plaintiff shall rely on appendix A' in full. However, for the convenience of the Court 2 paragraphs shall be introduced hereof, which are needed in order to understand the matter. Paragraphs 7, 8, of the contract establish the following (translated from English for convenience only, the prevailing version is the source, the term "the buyer" refers to the defendants, the term "the producer" refers to the plaintiff).

7. Non-Competition

During the term of this agreement and for a period of 2 years thereafter, the Buyer shall not be involved in any way, whether directly or indirectly, whether for consideration or not, in manufacturing, marketing, selling, promoting, or distributing hand painted frames for glasses of any kind (made of Plastic or Metal) Worldwide that resemble and/or compete with the Product.

8.1 It is hereby specifically acknowledged by the Buyer that it does not have, nor will it claim to have any proprietary rights, trade rights or copyrights with respect to the Product.

8.2 The Buyer will promote the product only under the Producer's registered trademarks, trade names, logos, labels and other indications of source or origin as may be determined by the Producer from time to time. Currently, the Producer's trademarks and/or trade names consist of: "OPART".

"ART OPTIC", "RONIT FURST".

8.3 It is stressed and agreed, that unless otherwise determined by the Producer in writing, the Product will be sold and distributed in the U.S.A only under the trade name - "RONIT FURST".

The conduct of the parties and termination of the contract

7. During the duration of the contract the defendants have breached it and were in arrears for paying for the products that were supplied to them. Since the contract was valid for one year only, the plaintiff took no action against the defendants. Yet, the plaintiff demanded that the infringements be rectified, and also made it clear to the defendants that the contract with them will not be renewed. Indeed, on December 30th, 2005 the period covered by the contract has expired. To be sure, from that date onward the plaintiff continued to supply products to the defendants, however, the contract between the parties was changed in such that the defendants are no longer entitled to exclusivity in marketing the products in the USA. The aforesaid agreement was expressed in exchanged messages via electronic mail (e-mail).
8. The defendants continued their infringements also after working under the current framework, hence the plaintiff was forced to inform the defendants that the contract is definitely terminated.

9. Relevant copies of the electronic correspondence are attached to the Statement of Claim as a part of it thereof and marked as appendix C'.
10. As it appears from the contents of the plaintiff's representative's letter, the association between the parties came to a final and absolute end on 12/05/06.
Copy of the letter is hereby attached and marked as appendix D'.

The prejudice: contravention of contract, forgery, fraud, copyrights infringement, commercial prejudices.

11. The defendants, on account of their attitude and due to the fact that the association period of the contract has expired, could no longer continue and sell the plaintiff's frames but wanted to enjoy the reputation which is the fruit of her labor, decided to employ fraud and deceit to benefit on the plaintiff's account. About two weeks before the time of the Claim the plaintiff found out that the defendants found a supplier, probably a South American country, which produces a precise copy of the defendant's frames, including the caption "Ronit Furst" which is on each frame. Those frames, in which the plaintiff has no part in their production, are marketed by the defendants by falsely claiming that the plaintiff is the producer and they the defendants are her agents.
It should be pointed out that finding a supplier, learning the design and manufacturing process and preparing a stock of frames, is a prolonged process which clearly establishes that the defendants made preparations for the forgery and copying deeds long time in coming, and only waited for the moment they could start the illicit deeds.
12. The defendants Approached different optician shops in the USA, from California to New York, they presented them with the fake frames,

claimed that they are produced by the plaintiff, received orders and even supplied the product.

Among others, the defendants and/or either one of them, solicited the following business owners:

12.1. Mrs. Cathy Shue, owner of optical goods in Monterey, California.

The defendants came to her with a proposal to make in her shop a special sale of the plaintiff's frames to the shop's selected clientele. On 03/10/07 they have indeed appeared at the shop, equipped with the plaintiff's samples and publicity material, and presented themselves as the plaintiff's agents. The shop's clients ordered frames, and after the defendants were given the list of orders they supplied the shop with the frames. The frames look exactly like the frames that are produced by the plaintiff, and only an expert's eye can discern the minute differences. Attached to this Statement of Claim is a photo of some of the fake frames that were given to Mrs. Shue, marked as appendix E'. The frame itself is kept at the undersigned advocate's office where it shall be presented to the Court.

12.2. "Braham Powell", optical goods in Alexandria, Virginia. On 03/20/07 a family member of Mrs. Ronit Furst took a stroll in this city and observed many "Ronit Furst" frames displayed for sale in the shop. He entered the shop, which had the plaintiff's publicity material including a photo of Mrs. Ronit Furst, he was told that the frames are selling very well, at a price of \$225 each. He was told that the defendants came to the shop and presented themselves as Ronit Furst agents, they told that Ronit Furst has transferred the production from Israel. This made the man suspicious and he asked

to examine the frames supplied by the defendants. Upon his examination he discovered that the frames are identical to the original frames, including the brand name "Ronit Furst" that appears at the side of the frame. Only after meticulous examination, and by being an engineer involved in the production process, he discovered that the frames are a fake. That same person also said that he saw "Ronit Furst" frames sold in another shop at that city. Those too were not produced by the plaintiff.

13. In addition to that, at the end of March 2007 an important and one of the largest exhibitions in the USA for optical goods took place in New York. In this exhibition the defendants made a stand laden with plaintiff's publicity material (which included, wall posters, wallpapers and colorful shelves by the design of the plaintiff and even brochures of the plaintiff that he received from the plaintiff for previous exhibitions) that feigns to be a stand of the plaintiff, yet in effect they are fake and the plaintiff had never produced them. Photo of the stand is attached hereof and marked as appendix F'. Furthermore, the defendants published at the official website of the exhibition that they are marketing "Ronit Furst" hand painted frames.
14. The defendants made known to optical shop owners in the USA that they intend to present "Ronit Furst" frames in trade fairs, including the optical fair MIDO in Milan at the beginning of May 2007. This is the largest well-known international fair in the optical industry as well as in a fair that is to take place in Chicago in May 2007. This points to the intention of the defendants to market the imitations worldwide.

The reasons for the Statement of Claim

15. The abovementioned behavior of the defendants constitutes the infringement of paragraph 7 of the Distribution Contract, appendix B'. Furthermore, it constitutes copyrights violation of the plaintiff in the design of the frames, and it constitutes violation of paragraphs 1, 2, 3, and 6 of the Commercial Prejudice Law 1999.

Supports and safeguarding

16. For the abovementioned prejudices the plaintiff is entitled to a support of an injunction and a declarative verdict which will be requested presently. Of course, the abovementioned behavior of the defendants caused the plaintiff, and may continue to cause her, severe financial loss and the plaintiff reserve the right to bring a claim for those damages when they shall come about.

Jurisdiction

17. The honorable Court has practical jurisdiction to deliberate the Claim due to the predicate of the claim, and local jurisdiction to deliberate it by the power of the parties' agreement in paragraph 10 of the contract, and by the virtue that all the prejudices ascribed to the defendants are an inseparable part of the infringements covered by the contract which, according to the abovementioned paragraph 10, is subject to the laws of the State of Israel. hence also the Israeli jurisdiction.

Therefore, the honorable Court is requested to summon the defendants to trial, to declare that the defendants are obligated in terms of paragraph 7 of the contract, appendix A' to desist for a period of two years beginning on 09/30/06 (last month of supply) from taking the following action: to produce, to sell, to market, or distribute eyeglasses' frames that are similar or in competition with the frames produced by the plaintiff. The Court is

further requested to issue a permanent injunction that will prohibit the defendants, directly or indirectly, to do one or more of the following actions: to sell, to produce or to present for commercial purposes anywhere in the world frames that bear the name "Ronit Furst", "Op-Art" or "Art Optic", or those that feign to be frames produced by the plaintiff and/or designed by Ronit Furst, to present themselves as agents or distributors or representatives or delegates of the plaintiff, to make use of designs, samples, drawings, or decorations that were designed by the plaintiff or for the plaintiff by Mrs. Ronit Furst, or in any other way to make any commercial use which constitutes infringements of the plaintiff's copyrights, or to make use of the plaintiff's production process, as well as to pay the plaintiff's trial costs and lawyers' fees.

Adv. Uriel Ganihar

For the plaintiff

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EXHIBIT B

At the District Court
In Tel-Aviv Jaffa

Tel-Aviv Jaffa District Court
A 1661/07 (BSA 9266/07)
Art Optic Ltd. Vs. Samuel Tomashover
(in the case of Art Optic Ltd. vs. Sam...
Date started: 30/04/07 legal procedure: standard
New case number: TA 47373-04/07

In the matter: **Art-Optic Ltd.**

Legally registered company in Israel (private company 513191148)
Of Hazamir St. 61, Kiryat Ono 55507
By its representatives Adv. Uriel Ganiher and/or Yael Amir Lev-Ari
And/or Yaron Raz and/or Nechami Mayzelish
Of David Hamelech Blvd. 12 Tel-Aviv 64953
Tel: 03-6968965 Fax: 03-6969781

The Petitioner

- Versus -

1. **Mr. Samuel Tomashover**
2. **Mrs. Meryl Tomashover**

Sales agents whose address is –
444 East 75th Street, Suite 17C,
New York 10021, New York, USA

The Respondents

**REQUEST IN WRITING FOR ISSUING A TEMPORARY INJUNCTION AT THE
PRESENCE OF ONE PARTY**

Request is hereby submitted to the honorable Court to issue a temporary injunction which will prohibit the respondents or either of them, directly, indirectly, or through those who act on their behalf, to do each one or more of the following deeds

Not to be involved in any way in the production, marketing, sales promotion, distribution and sale of hand painted frames for eyeglasses, as well as to prohibit the respondents to sell, produce, or to present anywhere in the world eyeglasses' frames

that bear the name "Ronit Furst", "Op-Art", or "Art Optic" or frames that feigned to be produced or designed by the petitioner. This shall be so until final verdict is issued in the proceedings submitted to the Court simultaneously with this petition.

This petition is submitted together with the attached request for ex parte permit outside jurisdiction, according to paragraph 500 to the civil procedure regulations.

Reasons for the request:

1. The petitioner is a private company registered in Israel, which among other, manufactures and distributes plastic eyeglasses' frames that are hand painted. The petitioner is a family company owned by Mrs. Lea Bibring that exclusively manufactures the brand "Ronit Furst" frames. Ronit Furst herself is the designer of the frames. The petitioner manages her business affairs in Israel but exports her products to different countries in Europe as well as to the USA. The petitioner owns the rights to use the brand "Ronit Furst" and has the copyrights to the designs, samples and drawings designed by Mrs. Ronit Furst.

2. Respondents 1 and 2 (the "respondents") are sales agents and distributors. In 2004 they were unemployed and through a relative of theirs they contacted the petitioner with an offer to distribute her products in the USA

The Product

3. The product produced by the petitioner (the "Product") is unique. The petitioner purchases, through a special order, transparent plastic frames that are produced according to the specifications of the petitioner. Mrs. Ronit Furst designs patterns, drawings and decorations that are painted on the frames according to her choice. It should be emphasized that the designs are originals, created by Mrs. Furst.

Artists that are working for the petitioner make precision copies, and under the supervision of Mrs. Furst, those samples and drawings are painted on all the frames. The frames are delivered to a factory where they undergo a coating process that affixes the painting on the surface of the frame. Each frame bears the brand name "Ronit Furst" as well as the index number which likewise is **written by hand on the inside of the right hand temple** of the frame. Picture of the index and in it the number of frames taken out of all the products of the plaintiff is attached to the Statement of Claim and marked as **appendix A'**

4. The eyeglass brand "Ronit Furst" exists commercially since 2002, the year when the petitioner was established. During this time it gained reputation for the originality of the models, their beauty and quality, where the frames bearing the brand are sold at selected optical shops.

The Association

5. In 2004, when the products of the petitioner were already sold in a number of shops in the USA, the petitioner was approached by one of the products' distributors in Israel, Mr. David Goldwasser, who told that his relatives, the respondents, are experienced marketing people but unemployed, and proposed to the petitioner that the respondents, together with himself, shall receive the distribution rights for the product in the USA. The petitioner agreed and a distribution contract was signed between the parties. A correct copy of the distribution contract is attached to the Claim as a part of it thereof and marked as **appendix B'**. Shortly afterward Mr. Goldwasser withdrew, with the consent of the parties, from his share in the deal, and the respondents remain the distributors of the product in the USA according to the contract.

6. The contract, appendix B', was signed for a period of 13 months starting December 1st, 2005. The petitioner shall rely on appendix B' in full. However, for the convenience of the Court 2 paragraphs shall be introduced hereof, which are needed

in order to understand the matter. Paragraphs 7, 8, of the contract establish the following (translated from English for convenience only, the prevailing version is the source, the term "the buyer" refers to the respondents, the term "the producer" refers to the petitioner).

7. Non-Competition

During the term of this agreement and for a period of 2 years thereafter, the Buyer shall not be involved in any way, wether directly or indirectly, wether for consideration or not, in manufacturing, marketing, selling, promoting, or distributing hand painted frames for glasses of any kind (made of Plastic or Metal) Worldwide that resemble and/or compete with the Product.

8.1 It is hereby specifically acknowledged by the Buyer that it does not have, nor will it claim to have any proprietary rights, trade rights or copyrights with respect to the Product.

8.2 The Buyer will promote the product only under the Producer's registered trademarks, trade names, logos, labels and other indications of source or origin as may be determined by the Producer from time to time. Currently, the Producer's trademarks and/or trade names consist of: "OPART",

"ART OPTIC", "RONIT FURST".

The conduct of the parties and termination of the contract

7. During the course of the contract the respondents have breached it and were in arrears for paying for the products that were supplied to them. Since the contract was valid for one year only, the petitioner took no action against the respondents. Yet, the petitioner demanded that the infringements be rectified, and also made it clear to the respondents that the contract with them will not be renewed. Indeed, on December 30th, 2005 the period covered by the contract has ended. To be sure, from that date onward the petitioner continued to supply products to the respondents, however, the contract between the parties was changed in such that the respondents are no longer entitled to exclusivity in marketing the products in the USA. The aforesaid agreement was expressed in exchanged messages via electronic mail (e-mail).

8. The respondents continued their infringements also after working under the current framework, hence the petitioner was forced to inform the respondents that the contract is definitely terminated.

9. The respondents, on account of their attitude and due to the fact that the association period of the contract has expired, could no longer continue and sell the petitioner's frames but wanted to enjoy the reputation which is the fruit of her labor, decided to employ fraud and deceit to benefit on the petitioner's account. About a month before the time of the Claim the petitioner found out that the respondents found a supplier, probably in a South American country, which produces a precise copy of the petitioner's frames, including the caption "Ronit Furst" which is on each frame. Those frames, in which the petitioner has no part in their production, are marketed by the respondents by falsely claiming that the petitioner is the producer and they the respondents are her agents.

It should be pointed out that finding a supplier, learning the designs and manufacturing process and preparing a stock of frames, is a prolonged process which clearly establishes that the respondents made preparations for the forgery and copying deeds long time in coming, and only waited for the moment they could start the illicit deeds.

10. The defendants approached different optician shops in the USA, from California to New York. they presented them with the fake frames, claiming that they are produced by the petitioner, received orders and even supplied the product.

Among others, the respondents and/or either one of them, solicited the following business owners:

10.1. Mrs. Cathy Shue, owner of optical goods in Monterey, California. The respondents came to her with a proposal to make in her shop a special sale of the petitioner's frames to the shop's selected clientele. On 03/10/07 they have indeed

appeared at the shop, equipped with the plaintiff's samples and publicity material, and presented themselves as the petitioner's agents. The shop's clients ordered frames, and after the respondents were given the list of orders they supplied the shop with the frames. The frames look exactly like the frames that are produced by the petitioner, and only an expert's eye can discern the minute differences. Attached to this Claim is a photo of part of the fake frames that were sold to Mrs. Shue, marked as **appendix C'**. Also attached is Mrs. Shue's affidavit which confirms the above said, marked as **appendix C'.1**.

The frames themselves are at the undersigned advocate's office and they shall be presented to the Court.

10.2. "Braham Powell", optical goods in Alexandria, Virginia. On 03/20/07 Mr. Itamar Furst, a family member of Mrs. Ronit Furst took a stroll in this city and observed many "Ronit Furst" frames displayed for sale in the shop. He entered the shop, which had the petitioner's publicity material including a photo of Mrs. Ronit Furst, he was told that the frames are selling very well, at a price of \$225 each. He was told that the respondents came to the shop and presented themselves as Ronit Furst agents, they told that Ronit Furst has transferred the production from Israel. This made the man suspicious and he asked to examine the frames supplied by the respondents. Upon his examination he discovered that the frames are identical to the original frames, including the brand name "Ronit Furst" that appears at the side of the frame. Only after meticulous examination, and by being an engineer involved in the production process, he discovered that the frames are fake. That same person also said that he saw "Ronit Furst" frames sold in another shop at that city. Those too were not produced by the petitioner.

Mr. Itamar Furst affidavit is attached to the request, marked as **appendix D'**.

11. In addition to that, at the end of March 2007 an important and one of the largest exhibitions in the USA for optical goods took place in New York. In this exhibition the respondents made a stand laden with petitioner's publicity material (which included, wall posters, wallpapers and colorful shelves by the design of the petitioner

and even brochures of the petitioner that he received from the petitioner for previous exhibitions) that feigns to be a stand of the petitioner, in which the respondents offered for sale eyeglasses frames that feigns to be of the petitioner, yet in effect they are fake and the petitioner had never produced them. Mrs. Ruth Domber who was present in the abovementioned exhibition, confirms in her affidavit the above said. Her affidavit and 2 photos of the stand, which were taken by Mrs. Domber, are attached hereof and marked as **appendix E', E'1.**

Furthermore, the respondents published at the official website of the exhibition that they market "Ronit Furst" hand painted frames.

12. The respondents made known to optical shop owners in the USA that they intend to present "Ronit Furst" frames in trade fairs, including the optical fair MIDO in Milan at the beginning of May 2007. This is the largest well-known international fair in the optical industry as well as in a fair that is to take place in Chicago in May 2007. This points to the intention of the respondents to market the imitations worldwide.

13. The abovementioned behavior of the respondents constitutes infringement of paragraph 7 of the Distribution Contract, appendix B'. Furthermore, it constitutes copyrights violation of the petitioner in the design of the frames, and it constitutes violation of paragraphs 1, 2, 3, and 6 of the Commercial Prejudice Law 1999.

14. For the abovementioned prejudices and for the fear of irreversible damage that will be caused to the petitioner if continuation of the abovementioned prejudices is not stopped without further delay, the petitioner is entitled to this temporary injunction until the petition submitted by the petitioner is heard. Should this injunction not be granted immediately and be enforced in the State of New York and as may be necessary also in Italy and other countries, all the rights of the petitioner squandered, as well as wasting the creativity and talent that were invested in the design of the product, and the reputation gained by the petitioner, whereas the respondents will benefit on her account. Furthermore, should the respondents be given the time for prolonged deliberation before

the injunction is issued, the objective of the injunction will be in vain as the respondents will be able to transfer large quantities of counterfeit products to clients throughout the USA and Europe.

15. After consultation with an attorney who specializes in intellectual property in New York, I have been informed that an order granted by this honourable court may be enforced in the state of New York.

16. It is legitimate and just to accede to the petition.

Adv. Uriel Ganihar

For the plaintiff

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EXHIBIT C

At the District Court
In Tel-Aviv Jaffa

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A 1661/07 (BSA 9266/07)
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The Petitioner

- Versus -

- 1. Mr. Samuel Tomashover**
- 2. Mrs. Meryl Tomashover**

Sales agents whose address is –
444 East 75th Street, Suite 17C,
New York 10021, New York, USA

The Respondents

REQUEST FOR EX PARTE PERMIT (OUTSIDE JURISDICTION)

Request is hereby submitted to the honorable Court to permit the presentation of
the proceedings and the request that is submitted simultaneously with this
submission, to the hands of the respondents in the following address:

444 East 75th Street, Suite 17C, New York 10021, New York, USA

Reasons for the request:

Preamble

1. This petition is intended to permit the petitioner to start proceedings to rectify prejudices caused to her by the respondents. The respondents are United States of America residents and their address is the one mentioned above, however they have associated with the petitioner in a contract that was made in Israel and which is subjected to Israeli laws, and where its jurisdiction is in Israel, where it all stems from the power of an explicit agreement by the parties as stated in the contract. This petition will unfold before the honorable Court the summary of the relevant facts and the reasons for issuing the requested permit.
2. The petitioner is a private company registered in Israel, which among other, produces and distributes plastic eyeglasses' frames that are hand painted. The petitioner is a family company owned by Mrs. Lea Bibring that exclusively manufactures the brand "Ronit Furst" frames. Ronit Furst herself is the designer of the frames. The petitioner manages her business affairs in Israel but exports her products to different countries in Europe as well as to the USA. The petitioner owns the rights to use the brand "Ronit Furst" and has the copyrights to the designs, samples and drawings designed by Mrs. Ronit Furst.
3. Respondents 1 and 2 (the "respondents") are sales agents and distributors. In 2004 they were unemployed and through a relative of theirs they contacted the petitioner with an offer to distribute her products in the USA.

The Product

4. The product that is produced by the petitioner (the "Product") is unique. The petitioner purchases, through a special order, transparent plastic frames that are produced according to the specifications of the petitioner Mrs. Ronit Furst designs patterns, drawings and decorations that are painted on the frames according to her choice. It should be emphasized that the designs are originals, created by Mrs. Furst. Artists that are working for the petitioner make precision copies, and under the supervision of Mrs. Furst, those samples and drawings are placed on all the frames.

The frames are delivered to a factory where they undergo a coating process that affixes the painting on the surface of the frame. Each frame bears the brand name "Ronit Furst" as well as the index number which likewise is written by hand on the inside of the right hand temple of the frame. Picture of the index and in it the number of frames taken out of all the products of the plaintiff is attached to the Statement of Claim and marked as **appendix A'**

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USA. The petitioner agreed and a distribution contract was signed between the parties. A correct copy of the distribution contract is attached to the Claim as a part of it thereof and marked as appendix B'. Shortly afterward Mr. Goldwasser withdrew, with the consent of the parties, from his share in the deal, and the respondents remain the distributors of the product in the USA according to the contract.

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During the term of this agreement and for a period of 2 years thereafter, the Buyer shall not be involved in any way, wether directly or indirectly, wether for consideration or not, in ~~manufacturing, marketing, selling, promoting, or distributing~~ hand painted frames for glasses of any kind (made of Plastic or Metal) Worldwide that resemble and/or compete with the Product.

8.1 It is hereby specifically acknowledged by the Buyer that it does not have, nor will it claim to have any proprietary right, trade rights or copyrights with respect to the Product.

8.2 The Buyer will promote the product only under the Producer's registered trademarks, trade names, logos, labels and other indications of source or origin as may be determined by the Producer from time to time. Currently, the Producer's trademarks and/or trade names consist of : "OPART",

"ART OPTIC", "RONIT FURST".

The conduct of the parties and termination of the contract

8. During the course of the contract the respondents have breached it and were in arrears for paying for the products that were supplied to them. Since the contract was valid for one year only, the petitioner took no action against the respondents. Yet, the petitioner demanded that the infringements be rectified, and also made it clear to the respondents that the contract with them will not be renewed. Indeed, on December 30th, 2005 the period covered by the contract has ended. To be sure, from that date onward the petitioner continued to supply products to the respondents, however, the contract between the parties was changed in such that the respondents were no longer entitled to exclusivity in marketing the products in the USA. The aforesaid agreement was expressed in exchanged messages via electronic mail (e-mail).
9. The respondents continued their infringements also after working under the current framework, hence the petitioner was forced to inform the respondents that the contract is definitely terminated.
10. The respondents, on account of their attitude and due to the fact that the association period of the contract has expired, could no longer continue and sell the petitioner's frames but wanted to enjoy the reputation which is the fruit of her labor, decided to employ fraud and deceit to benefit on the petitioner's account. About two weeks before the time of the Claim the petitioner found out that the respondents found a supplier, probably in a South American country, which produces a precise copy of the petitioner's frames, including the caption "Ronit Furst" which is on each frame. Those frames, in which the petitioner has no part in their production, are marketed by the respondents by falsely claiming that the petitioner is the producer and they the respondents are her agents. It should be pointed out that finding a supplier, learning the design and manufacturing process and preparing a stock of frames, is a prolonged

process which clearly establishes that the respondents made preparations for the forgery and copying deeds long time in coming, and only waited for the moment they could start the illicit deeds.

11. The defendants approached different optician shops in the USA, from California to New York, they presented them with the fake frames, claiming that they are produced by the petitioner, received orders and even supplied the product.

Among others, the respondents and/or either one of them, solicited the following business owners:

- 11.1. Mrs. Cathy Shue, owner of optical goods in Monterey, California.
The respondents came to her with a proposal to make in her shop a special sale of the petitioner's frames to the shop's selected clientele. On 10/03/07 they have indeed appeared at the shop, equipped with the plaintiff's samples and publicity material, and presented themselves as the petitioner's agents. The shop's clients ordered frames, and after the respondents were given the list of orders they supplied the shop with the frames. The frames look exactly like the frames that are produced by the petitioner, and only an expert's eye can discern the minute differences. Attached to this Claim is a photo of part of the fake frames that were given to Mrs. Shue, marked as appendix C'. The frames themselves are kept at the undersigned advocate's office where they shall be presented to the Court.
- 11.2. "Braham Powell", optical goods in Alexandria, Virginia. On 20/3/07 a family member of Mrs. Ronit Furst took a stroll in this city and observed many "Ronit Furst" frames displayed for sale in the shop.

He entered the shop, which had the petitioner's publicity material including a photo of Mrs. Ronit Furst, he was told that the frames are selling very well, at a price of \$225 each. He was told that the respondents came to the shop and presented themselves as Ronit Furst agents, they told that Ronit Furst has transferred the production from Israel. This made the man suspicious and he asked to examine the frames supplied by the respondents. Upon his examination he discovered that the frames are identical to the original frames, including the brand name "Ronit Furst" that appears at the side of the frame. Only after meticulous examination, and by being an engineer involved in the production process, he discovered that the frames are fake. That same person also said that he saw "Ronit Furst" frames sold in another shop at that city. Those too were not produced by the petitioner.

12. In addition to that, at the end of March 2007 an important and one of the largest exhibitions in the USA for optical goods took place in New York. In this exhibition the respondents made a stand laden with petitioner's publicity material (which included, wall posters, wallpapers and colorful shelves by the design of the petitioner and even brochures of the petitioner that he received from the petitioner for previous exhibitions) that feigns to be a stand of the petitioner, yet in effect they are fake and the petitioner had never produced them. Photo of the stand is attached hereof and marked as **appendix D'**. Furthermore, the respondents published at the official website of the exhibition that they market "Ronit Furst" hand painted frames.
13. The respondents made known to optical shop owners in the USA that they intend to present "Ronit Furst" frames in trade fairs, including the optical fair MIDO in Milan at the beginning of May 2007. This is the

largest well-known international fair in the optical industry as well as in a fair that is to take place in Chicago in May 2007. This points to the intention of the respondents to market the imitations worldwide.

14. The abovementioned behavior of the respondents constitutes infringement of paragraph 7 of the Distribution Contract, appendix B'. Furthermore, it constitutes copyrights violation of the petitioner in the design of the frames, and it constitutes violation of paragraphs 1, 2, 3, and 6 of the Commercial Prejudice Law 1999.
15. For the abovementioned prejudices and for the fear of irreversible damage that will be caused to the petitioner if continuation of the abovementioned prejudices is not be stopped on the spot, the petitioner is entitled for an ex parte injunction until the petition submitted by the petitioner is heard. Should this injunction not be granted immediately and be enforced in the State of New York and as may be necessary also in Italy and other countries, all the rights of the petitioner will be squandered, as well as wasting the creativity and talent that were invested in the design of the product, and the reputation gained by the petitioner, whereas the respondents will benefit on her account. Furthermore, should the respondents be given the time for prolonged deliberation before the injunction is issued, the objective of the injunction will be in vain as the respondents will be able to transfer large quantities of counterfeit products to clients throughout the USA and Europe.
16. Paragraph 10 of the contracts sets out:

10. Governing Law

This agreement shall be governed and interpreted solely in accordance with the laws of Israel. Any and all disputes arising between the parties out of or in connection of this agreement, its interpretation, performance or breach, shall be referred to a binding arbitration before a single arbitrator to be appointed by mutual agreement between the parties and, in the absence of such agreement, within fourteen (14) days from any of the parties first demand, and the arbitrator will be appointed at the request of either party by the chairman of the Israeli bar. The arbitration will be held in Tel-Aviv, Israel. The arbitration shall be conducted in accordance with the provisions of the Israeli arbitration Law, 1968. The arbitrator shall not be bound by any rules of evidence or procedure, but shall be bound by the substantive of Israeli law. Any award or decision rendered shall be made by means of written opinion explaining by arbitrator's reasons for the award or decision, shall be final and binding upon the parties hereto, and shall be given in 60 days from the appointment of the arbitrator.

Should the respondents be willing to implement the arbitration agreement in terms of the abovementioned and in accordance with the provisions of the law, the petitioner hereby declares that on her part she will endeavor to do all that it takes in order to have the arbitration in Israel. However, at the present stage the petitioner urgently requires the temporary injunction, according to the petition, to issue such an injunction that is submitted simultaneously with this petition, for the support to which she is entitled in accordance with the law and the contract.

17. It is legitimate and just to accede to the petition.

Adv. Uriel Ganihar

For the plaintiff

(-)

EXHIBIT D

AFFIDAVIT

I, the undersigned Ehud Bibring bearer of I.D. document number 056716574 of Hazamir Street 61, Kiryat Ono, who after being warned that I have to state the truth, otherwise I may be subjected to penalties prescribed by the law, hereby state the following in writing:

1. My name and address are those that are mentioned above.
2. In this affidavit: "the petitioner": "Art Optic" company Ltd.; "the respondents" Mr. Samuel Tomashover and Mrs. Meryl Tomashover.
3. I serve in the capacity of Marketing and Export Manager of the company "Art Optic" Ltd. ("the petitioner"). I attended on behalf of the petitioner to the association between her and between Messrs. Samuel and Meryl Tomashover ("the respondents") and the facts which are detailed in this affidavit are known to me personally, except for the facts that are known to me to the best of my belief and knowledge, for which I have herein conveyed the source of the knowledge and/or have attached documents, as the case may be.

The parties

4. The petitioner is a private company registered in Israel, which among other produces and distributes plastic eyeglasses' frames that are hand painted. The petitioner is a family company owned by Mrs. Lea Bibring which exclusively manufactures the brand "Ronit Furst" frames. Ronit Furst herself is the designer of the frames. The petitioner manages her business affairs in Israel but exports her products to different countries in Europe as well as to the USA. The petitioner holds the rights to use the brand "Ronit

Furst" and owns the copyrights to the designs, samples and drawings designed by Mrs. Ronit Furst.

5. Respondents 1 and 2 (the "respondents") are sales agents and distributors. In 2004 they were unemployed and through a relative of theirs they contacted the petitioner with an offer to distribute her products in the USA.

The Product

6. The product produced by the petitioner (the "Product") is unique. The petitioner purchases, through a special order, transparent plastic frames that are produced according to the specifications of the petitioner. Mrs. Ronit Furst designs patterns, drawings and decorations on the frames according to her choice. It should be emphasized that the designs are originals, created by Mrs. Furst. Artists that are working for the petitioner make precision copies, and under the supervision of Mrs. Furst, those samples and drawings are painted on all the frames.

The frames are delivered to a factory where they undergo a coating process that affixes the painting on the surface of the frame. Each frame bears the brand name "Ronit Furst" as well as the index number which likewise is written by hand on the inside of the right hand temple of the frame. Picture of the index and in it the number of frames taken out of all the products of the petitioner is attached to the Statement of Claim and marked as **appendix A'**

7. The eyeglass brand "Ronit Furst" exists commercially since 2002, the year when the petitioner was established. During this time it gained reputation for the originality of the models, their beauty and quality, where the frames bearing the brand are sold at selected optical shops.

The Association

8. In 2004, when the products of the petitioner were already sold in a number of shops in the USA, the petitioner was approached by one of the products' distributors in Israel, Mr. David Goldwasser, who told that his relatives, the respondents, are experienced marketing people but unemployed, and proposed to the petitioner that the respondents, together with himself, shall receive the distribution rights for the product in the USA. The petitioner agreed and a distribution contract was signed between the parties. A correct copy of the distribution contract is attached to the Claim as a part of it thereof and marked as **appendix B'**. Shortly afterward Mr. Goldwasser withdrew, with the consent of the parties, from his share in the deal, and the respondents remained the distributors of the product in the USA according to the contract.

The contract

9. The contract, appendix B', was signed for a period of 13 months starting December 1st, 2005. The petitioner shall rely on appendix B' in full. However, for the convenience of the Court 2 paragraphs shall be introduced hereof, which are needed in order to understand the matter. Paragraphs 7, 8, of the contract establish the following (translated from English for convenience only, the prevailing version is the source, the term "the buyer" refers to the respondents, the term "the producer" refers to the petitioner).

7. Non-Competition

During the term of this agreement and for a period of 2 years thereafter, the Buyer shall not be involved in any way, wether directly or indirectly, wether for consideration or not, in manufacturing, marketing, selling, promoting, or distributing, hand painted frames for glasses of any kind (made of Plastic or Metal) Worldwide that resemble and/or compete with the Product.

8.1 It is hereby specifically acknowledged by the Buyer that it does not have, nor will it claim to have any proprietary rights, trade rights or copyrights with respect to the Product.

8.2 The Buyer will promote the product only under the Producer's registered trademarks, trade names, logos, labels and other indications of source or origin as may be determined by the Producer from time to time. Currently, the Producer's trademarks and/or trade names consist of : "CPART",

"ART OPTIC", "RONIT FURST".

The conduct of the parties and termination of the contract.

10. During the duration of the contract the respondents have breached it and were in arrears for paying for the products that were supplied to them. Since the contract was valid for one year only, the petitioner took no action against the respondents. Yet, the petitioner demanded that the infringements be rectified, and also made it clear to the respondents that the contract with them will not be renewed. Indeed, on December 30th, 2005 the period covered by the contract has expired. To be sure, from that date onward the petitioner continued to supply products to the respondents, however, the contract between the parties was changed in such that the respondents were no longer entitled to exclusivity in marketing the products in the USA. The aforesaid agreement was expressed in exchanged messages via electronic mail (e-mail).
11. The respondents continued their infringements also after working under the current framework, hence the petitioner was forced to inform the respondents that the contract is definitely terminated.

12. Relevant copies of the electronic correspondence are attached to the Claim as a part hereof and marked as appendix C'
13. As it appears from the contents of the letter by the advocate of the petitioner, the association between the parties came to a definite end on December 5th,2006.
14. To the best of my knowledge and belief, and as I understood from the optics shop owners in the USA, Mrs. Cathy Shue and Mrs. Ruth Domber, whose affidavits are attached to the petition for which this affidavit of mine is supporting. Indeed, the respondents, on account of their behavior and due to the fact that the association period of the contract has ended, could no longer continue and sell the petitioner's frames but wanted to enjoy the reputation which is the fruit of her labor, decided to employ fraud and deceit to benefit on the petitioner's account. About a month before the time of the Claim the petitioner found out that the respondents found a supplier, probably in a South American country, which produces a precise copy of the petitioner's frames, including the caption "Ronit Furst" which is marked on each frame. Those frames, in which the petitioner has no part in their production, are marketed by the respondents by falsely claiming that the petitioner is the producer and they the respondents are her agents.
It should be pointed out that finding a supplier, learning the design and manufacturing process and preparing a stock of frames, is a prolonged process which clearly establishes that the respondents made preparations for the forgery and copying deeds long time in coming, and only waited for the moment they could start the illicit deeds.
15. The respondents approached different optical shops in the USA, from California to New York, they presented them with the fake frames, claiming

that they are produced by the petitioner, received orders and even supplied the product.

Among others, the respondents and/or either one of them, solicited the following business owners:

15.1. Mrs. Cathy Shue, owner of optical goods shop in Monterey, California. The respondents came to her with a proposal to make in her shop a special sale of the petitioner's frames to the shop's selected clientele. On 10/03/07 they have indeed appeared at the shop, equipped with the petitioner's samples and publicity material, and presented themselves as the petitioner's agents. The shop's clients ordered frames, and after the respondents were given the list of orders they supplied the shop with the frames. The frames look exactly like the frames that are produced by the petitioner, and only an expert's eye can discern the minute differences. Attached to this Claim is a photo of some of the fake frames that were given to Mrs. Shaw, marked as **appendix D'**. The frames themselves are kept at the undersigned advocate's office and they shall be presented to the Court.

15.2. "Braham Powell", optical goods shop in Alexandria, Virginia. On 03/20/07 a family member of Mrs. Ronit Furst took a stroll in this city and observed many "Ronit Furst" frames displayed for sale in the shop. He entered the shop, which had the petitioner's publicity material including a photo of Mrs. Ronit Furst, he was told that the frames are selling very well, at a price of \$225 each. He was told that the respondents came to the shop and presented themselves as Ronit Furst agents, they told that Ronit Furst has transferred the production from Israel. This made the man suspicious and he asked to examine the frames supplied by the respondents. Upon his examination he

discovered that the frames are identical to the original frames, including the brand name "Ronit Furst" that appears at the side of the frame. Only after meticulous examination, and by being an engineer involved in the production process, he discovered that the frames are fake. That same person also said that he saw "Ronit Furst" frames sold in another shop at that city. Those too were not produced by the petitioner.

16. In addition to that, at the end of March 2007 an important and one of the largest exhibitions in the USA for optical goods took place in New York. In this exhibition the respondents made a stand laden with petitioner's publicity material (which included, wall posters, wallpapers and colorful shelves by the design of the petitioner and even brochures of the petitioner that he received from the petitioner for previous exhibitions) that feigns to be a stand of the petitioner, in which eyeglasses frames that feigns to be that of the petitioner, were offered for sale, yet in effect they are fake and the petitioner had never produced them. Photo of the stand is attached hereof and marked as **appendix E'**. Furthermore, the respondents published at the official website of the exhibition that they are marketing "Ronit Furst" hand painted frames.
17. The respondents made known to optical shop owners in the USA that they intend to present "Ronit Furst" frames in trade fairs, including the optical fair MIDO in Milan at the beginning of May 2007. This is the largest well-known international fair in the optical industry, as well as in a fair that is to take place in Chicago in May 2007. This points to the intention of the respondents to market the imitations worldwide

Reasons for the petition

18. To the best of my knowledge and belief, and as was explained to me by my legal advisor, the abovementioned behavior of the respondents constitutes the infringement of paragraph 7 of the Distribution Contract, appendix B'. Furthermore, it constitutes copyrights violation of the petitioner in the design of the frames, and it constitutes violation of paragraphs 1, 2, 3, and 6 of the Commercial Prejudice Law 1999.

The importance of the required support and applying it to the website

19. To the best of my knowledge and belief and as was explained to me by my legal adviser, indeed because of the abovementioned prejudices and for the fear of irreversible damage that will be caused to the petitioner if continuation of the abovementioned prejudices is not stopped on the spot, the petitioner is entitled for an ex parte injunction in the presence of one party until the petition submitted by the petitioner is heard. Should this injunction not be granted immediately and be enforced in the State of New York and as may be necessary also in Italy and other countries, all the rights of the petitioner will be squandered, as well as wasting the creativity and talent that were invested in the design of the product, and the reputation gained by the petitioner, whereas the respondents will benefit on her account. Furthermore, should the respondents be given the time for prolonged deliberation before the injunction is issued, the objective of the injunction will be in vain as the respondents will be able to transfer large quantities of counterfeit products to clients throughout the USA and Europe.

Enforcement

20. To the best of my knowledge and belief, my legal advisers were informed by consultation with lawyers in the relevant domain from the State of New York, that an injunction which may be given as requested by an Israeli Court can be enforced in the State of New York.

21. I present this affidavit in support of the petitioner's petition to issue a temporary injunction against the respondents, and I state that this is my name, this is my signature, and the contents of my affidavit are true.

22. This is my name, this is my signature and the contents of my affidavit - true.

Ehud Bibring

(-)

CONFIRMATION

I hereby confirm that on 26/4/06 appeared before Advocate Nechami Mayzlish at my office in David Hamelech Blvd. 12, Tel-Aviv, Mr. Ehud Bibring who is known to me personally, and after warning him that he have to state only the truth, otherwise he may be subjected to penalties prescribed by the law should he not do so, has confirmed the truthfulness of his above affidavit by his signature.

(Seal and signature):

Nechami Mayzlish, Adv. License No. 33283

David Hamelech Blvd. 12, Tel-Aviv,

Tel: 03-6969781, 03-6968965

At the District Court
In Tel-Aviv Jaffa

Tel-Aviv Jaffa District Court
A 1661/07
Art Optic Ltd. Vs. Samuel Tomashover
Date started: 30/04/07 legal procedure: standard
New case number: TA 47373-04/07

In the matter: **Art-Optic Ltd.**

Legally registered company in Israel (private company 513191148)
Of Hazamir St. 61, Kiryat Ono 55507
By its representatives Adv. Uriel Ganiher and/or Yael Amir Lev-Ari
And/or Yaron Raz and/or Nechami Mayzelish
Of David Hamelech Blvd. 12 Tel-Aviv 64953
Tel: 03-6968965 Fax: 03-6969781

The Plaintiff

- Versus -

1. **Mr. Samuel Tomashover**
2. **Mrs. Meryl Tomashover**

Sales agents whose address is –
444 East 75th Street, Suite 17C,
New York 10021, New York, USA

The Defendants

The essence of the Claim: Claim for Declarative Verdict and for an Injunction.

Amount of Claim: Can not be estimated in money

STATEMENT OF CLAIM

The Parties

- 1 The plaintiff is a private company registered in Israel, which among other manufactures and distributes plastic eyeglasses' frames that are hand painted. The plaintiff is a family company owned by Mrs. Lea Bibring that

exclusively manufactures the brand "Ronit Furst" frames. Ronit Furst herself is the designer of the frames. The plaintiff manages her business affairs in Israel but exports her products to different countries in Europe as well as to the USA. The plaintiff holds the rights to use the brand "Ronit Furst" and has the copyrights to the designs, samples and drawings designed by Mrs. Ronit Furst.

2. Defendants 1 and 2 (the "Defendants") are sales agents and distributors. In 2004 they were unemployed and through a relative of theirs they contacted the plaintiff with an offer to distribute her products in the USA.

The Product

3. The product produced by the plaintiff (the "Product") is unique. The plaintiff purchases, through a special order, transparent plastic frames that are produced according to the specifications of the plaintiff. Mrs. Ronit Furst designs patterns, drawings and decorations that are painted on the frames according to her choice. It should be emphasized that the designs are originals, created by Mrs. Furst. Artists that are working for the plaintiff make precision copies, and under the supervision of Mrs. Furst, those samples and drawings are painted on all the frames.

The frames are delivered to a factory where they undergo a coating process that affixes the painting on the frame. Each frame bears the brand name "Ronit Furst" as well as an index number which likewise is written by hand on the inside of the right hand temple of the frame. Picture of the index and in it the number of frames taken out of all the products of the plaintiff is attached to the Statement of Claim and marked as **appendix A'**

4. The eyeglass brand "Ronit Furst" exists commercially since 2002, the year when the plaintiff was established. During this time it gained reputation

for the originality of the models, their beauty and quality, where the frames bearing the brand are sold at selected optical shops.

The Association

5. In 2004, when the products of the plaintiff were already sold in a number of shops in the USA, the plaintiff was approached by one of the products' distributors in Israel, Mr. David Goldwasser, who told that his relatives, the defendants, are experienced marketing people but unemployed, and proposed to the plaintiff that the defendants, together with himself, shall receive the distribution rights for the product in the USA. The plaintiff agreed and a distribution contract was signed between the parties. A correct copy of the distribution contract is attached to the Statement of Claim as a part of it thereof and marked as **appendix B'**. Shortly afterward Mr. Goldwasser withdrew, with the consent of the parties, from his share in the deal, and the defendants remain the distributors of the product in the USA according to the contract.

The Contract

6. The contract, appendix A', was signed for a period of 13 months starting December 1st, 2005. The plaintiff shall rely on appendix A' in full. However, for the convenience of the Court 2 paragraphs shall be introduced hereof, which are needed in order to understand the matter. Paragraphs 7, 8. of the contract establish the following (translated from English for convenience only, the prevailing version is the source, the term "the buyer" refers to the defendants, the term "the producer" refers to the plaintiff).

7. 7. Non-Competition

During the term of this agreement and for a period of 2 years thereafter, the Buyer shall not be involved in any way, whether directly or indirectly, whether for consideration or not, in manufacturing, marketing, selling, promoting, or distributing hand painted frames for glasses of any kind (made of Plastic or Metal) Worldwide that resemble and/or compete with the Product.

7. 8.1 It is hereby specifically acknowledged by the Buyer that it does not have, nor will it claim to have any proprietary rights, trade rights or copyrights with respect to the Product.

7. 8.2 The Buyer will promote the product only under the Producer's registered trademarks, trade names, logos, labels and other indications of source or origin as may be determined by the Producer from time to time. Currently, the Producer's trademarks and/or trade names consist of : "OPART",

"ART OPTIC", "RONIT FURST".

8.3 It is stressed and agreed, that unless otherwise determined by the Producer in writing, the Product will be sold and distributed in the U.S.A only under the trade name - "RONIT FURST".

The conduct of the parties and termination of the contract

7. During the duration of the contract the defendants have breached it and were in arrears for paying for the products that were supplied to them. Since the contract was valid for one year only, the plaintiff took no action against the defendants. Yet, the plaintiff demanded that the infringements be rectified, and also made it clear to the defendants that the contract with them will not be renewed. Indeed, on December 30th, 2005 the period covered by the contract has expired. To be sure, from that date onward the plaintiff continued to supply products to the defendants, however, the contract between the parties was changed in such that the defendants are no longer entitled to exclusivity in marketing the products in the USA. The aforesaid agreement was expressed in exchanged messages via electronic mail (e-mail).

8. The defendants continued their infringements also after working under the current framework, hence the plaintiff was forced to inform the defendants that the contract is definitely terminated.

9. Relevant copies of the electronic correspondence are attached to the Statement of Claim as a part of it thereof and marked as appendix C'.

10. As it appears from the contents of the plaintiff's representative's letter, the association between the parties came to a final and absolute end on 12/05/06.

Copy of the letter is hereby attached and marked as appendix D'.

The prejudice: contravention of contract, forgery, fraud, copyrights infringement, commercial prejudices.

11. The defendants, on account of their attitude and due to the fact that the association period of the contract has expired, could no longer continue and sell the plaintiff's frames but wanted to enjoy the reputation which is the fruit of her labor, decided to employ fraud and deceit to benefit on the plaintiff's account. About two weeks before the time of the Claim the plaintiff found out that the defendants found a supplier, probably a South American country, which produces a precise copy of the defendant's frames, including the caption "Ronit Furst" which is on each frame. Those frames, in which the plaintiff has no part in their production, are marketed by the defendants by falsely claiming that the plaintiff is the producer and they the defendants are her agents.

It should be pointed out that finding a supplier, learning the design and manufacturing process and preparing a stock of frames, is a prolonged process which clearly establishes that the defendants made preparations for the forgery and copying deeds long time in coming, and only waited for the moment they could start the illicit deeds.

12. The defendants Approached different optician shops in the USA, from California to New York, they presented them with the fake frames.

claimed that they are produced by the plaintiff, received orders and even supplied the product.

Among others, the defendants and/or either one of them, solicited the following business owners:

12.1. Mrs. Cathy Shue, owner of optical goods in Monterey, California.

The defendants came to her with a proposal to make in her shop a special sale of the plaintiff's frames to the shop's selected clientele. On 03/10/07 they have indeed appeared at the shop, equipped with the plaintiff's samples and publicity material, and presented themselves as the plaintiff's agents. The shop's clients ordered frames, and after the defendants were given the list of orders they supplied the shop with the frames. The frames look exactly like the frames that are produced by the plaintiff, and only an expert's eye can discern the minute differences. Attached to this Statement of Claim is a photo of some of the fake frames that were given to Mrs. Shue, marked as appendix E'. The frame itself is kept at the undersigned advocate's office where it shall be presented to the Court.

12.2. "Braham Powell", optical goods in Alexandria, Virginia. On 03/20/07 a family member of Mrs. Ronit Furst took a stroll in this city and observed many "Ronit Furst" frames displayed for sale in the shop. He entered the shop, which had the plaintiff's publicity material including a photo of Mrs. Ronit Furst, he was told that the frames are selling very well, at a price of \$225 each. He was told that the defendants came to the shop and presented themselves as Ronit Furst agents, they told that Ronit Furst has transferred the production from Israel. This made the man suspicious and he asked

to examine the frames supplied by the defendants. Upon his examination he discovered that the frames are identical to the original frames, including the brand name "Ronit Furst" that appears at the side of the frame. Only after meticulous examination, and by being an engineer involved in the production process, he discovered that the frames are a fake. That same person also said that he saw "Ronit Furst" frames sold in another shop at that city. Those too were not produced by the plaintiff.

13. In addition to that, at the end of March 2007 an important and one of the largest exhibitions in the USA for optical goods took place in New York. In this exhibition the defendants made a stand laden with plaintiff's publicity material (which included, wall posters, wallpapers and colorful shelves by the design of the plaintiff and even brochures of the plaintiff that he received from the plaintiff for previous exhibitions) that feigns to be a stand of the plaintiff, yet in effect they are fake and the plaintiff had never produced them. Photo of the stand is attached hereof and marked as **appendix F'**. Furthermore, the defendants published at the official website of the exhibition that they are marketing "Ronit Furst" hand painted frames.
14. The defendants made known to optical shop owners in the USA that they intend to present "Ronit Furst" frames in trade fairs, including the optical fair MIDO in Milan at the beginning of May 2007. This is the largest well-known international fair in the optical industry as well as in a fair that is to take place in Chicago in May 2007. This points to the intention of the defendants to market the imitations worldwide.

The reasons for the Statement of Claim

15. The abovementioned behavior of the defendants constitutes the infringement of paragraph 7 of the Distribution Contract, appendix B'. Furthermore, it constitutes copyrights violation of the plaintiff in the design of the frames, and it constitutes violation of paragraphs 1, 2, 3, and 6 of the Commercial Prejudice Law 1999.

Supports and safeguarding

16. For the abovementioned prejudices the plaintiff is entitled to a support of an injunction and a declarative verdict which will be requested presently. Of course, the abovementioned behavior of the defendants caused the plaintiff, and may continue to cause her, severe financial loss and the plaintiff reserve the right to bring a claim for those damages when they shall come about.

Jurisdiction

17. The honorable Court has practical jurisdiction to deliberate the Claim due to the predicate of the claim, and local jurisdiction to deliberate it by the power of the parties' agreement in paragraph 10 of the contract, and by the virtue that all the prejudices ascribed to the defendants are an inseparable part of the infringements covered by the contract which, according to the abovementioned paragraph 10, is subject to the laws of the State of Israel, hence also the Israeli jurisdiction.

Therefore, the honorable Court is requested to summon the defendants to trial, to declare that the defendants are obligated in terms of paragraph 7 of the contract, appendix A' to desist for a period of two years beginning on 09/30/06 (last month of supply) from taking the following action: to produce, to sell, to market, or distribute eyeglasses' frames that are similar or in competition with the frames produced by the plaintiff. The Court is

further requested to issue a permanent injunction that will prohibit the defendants, directly or indirectly, to do one or more of the following actions: to sell, to produce or to present for commercial purposes anywhere in the world frames that bear the name "Ronit Furst", "Op-Art" or "Art Optic", or those that feign to be frames produced by the plaintiff and/or designed by Ronit Furst, to present themselves as agents or distributors or representatives or delegates of the plaintiff, to make use of designs, samples, drawings, or decorations that were designed by the plaintiff or for the plaintiff by Mrs. Ronit Furst, or in any other way to make any commercial use which constitutes infringements of the plaintiff's copyrights, or to make use of the plaintiff's production process, as well as to pay the plaintiff's trial costs and lawyers' fees.

Adv. Uriel Ganihar

For the plaintiff

(-)

3 n903

SALES AND DISTRIBUTION AGREEMENT

This sales and distribution agreement is made and entered into as of the 1st day of October 2004.

By and between Mrs Lea Bibring and/or Art Optic Ltd- a company registered in Israel, business No.513191148, It's address:61 Hazamir Street, Kiryat-Ono 55507, Israel (henceforth: **The Producer**)

And: Mr.David Goldwasser, Mr & Mrs Samuel & Meryl Tomashover -in person and/or as company (when and if such a company will be established in future). It's address: Mr.Goldwasser-

8 Haoranim Street,Kfar Maas,Israel., Mr.&Mrs.Tomashover- 444 east 75th Street,suite#17C,NY,New York 10021, U.S.A (henceforth: **The Buyer**)

WHEREAS, The producer produces hand painted frames for glasses of any kind and adjoining cases for those frames, under the trade name RONIT FURST (henceforth : **The Product**).

WHEREAS, The producer wishes to export the product and sell it in the U.S.A. and for that purpose is prepared to grant sole distribution rights for the U.S.A only.

WHEREAS, The Buyer wishes to buy the product and has the will as the ability and the means to cause such distribution, and wishes to undertake the distribution of the product in the U.S.A.

Therefore the parties have jointly decided on the following agreement:

1. The above declarations made by the parties are an integral part of the agreement.

2. In exchange of the commitment undertaken by the buyer to sell and distribute the product in the U.S.A. and to grant distribution rights for the U.S.A. subject to the conditions laid out in this Agreement, the producer will grant to the buyer the right to sell and distribute the product in the U.S.A.

Despite the above said, the parties agree that the buyer will not be allowed to sell the product in the U.S.A. to any other customer.

Mr. Morley of Advanced Vision, 100 Broadway Avenue, Rochester, NY 14607
Mrs. Ruth, Dombrowsky, 100 Broadway Avenue, New York, NY 10007

It is hereby acknowledged on the part of the buyer that this agreement has been read, understood and accepted by the Producer for and on its behalf as the agreement. And the buyer understands that the buyer is not allowed to sell the product in the U.S.A. to any other customer.

3. The agreement shall commence on December 1, 2004 and will stay in force till December 31, 2005, provided that the Buyer has fulfilled its minimum purchase orders in accordance with section 4 below and all of the other commitments and obligations as set forth in this agreement.

4. The Buyer undertakes to purchase from the producer the minimum sales forecasts as set here forth:

Sales for the period from December 1, 2004 to June 30, 2005: Minimum: 65,000 US\$ ex-work.

In words: sixty five thousand US dollars

LL in quantity: a minimum of 2600 Frames

Buyer hereby represents and confirms that it would not have received the title of sole distribution rights had he not agreed to its undertaking in this section 4

5. The 2 sides to this agreement hereby proclaim that their basic intention is to continue their business connection for the satisfactory of both sides, further to 2005, by binding of a long term contract that shall be made and signed towards the end of 2005.

However, should the producer, for reasons that the Buyer has no control over, wish to appoint a different distributor for the U.S.A- for the period after 1 January 2006, he will have to purchase back all the (first quality) frames that the Buyer still has in his stock- prior to the termination of this agreement, at ex-work cost price, not including freight costs.

Furthermore, it is hereby agreed that the Buyer will have first refusal rights prior to any distribution contract- between the Producer and a different distributor in the Area that includes USA.

6. Prices, Terms and Delivery

6.1 The agreed price for each frame shall be 25.00 US\$ (Twenty Five Dollars) EX WORKS, which shall include shipping, export documents and insurance costs.

6.2 Terms of payment: The Buyer shall pay 100% of the agreed price for the frames within 10 days of notice that the order is ready to be shipped.

The Buyer shall provide the following information to the Producer:

In accordance with the purchase order, the Buyer shall provide the following information to the Producer after the goods have been shipped:

8.3 Delivery: The Buyer shall be responsible for the delivery of the frames to the end user. The Buyer shall be responsible for the delivery of the frames to the end user. The Buyer shall be responsible for the delivery of the frames to the end user.

b. Purchase orders by the Buyer shall be in writing (by e-mail or by Fax messages) and are subject to acceptance by the Producer in writing.

It is hereby clarified that once the Producer accepts the order, the Buyer is obliged to purchase the ordered frames as listed in the order. Furthermore, the Buyer undertakes not to return and/or exchange any frame. Without derogating from the above said, the producer agrees to exchange any frame found to be **production Defective**- within a period of **12 months** from it's delivery to the Buyer. The Buyer will return such frames, and these will be exchanged by the Producer at no further cost to the Buyer.

Under no circumstances will the Buyer deduct payment for frames said to be defective. Those

As specified above- will be exchanged for new ones.

7. Non-Competition

During the term of this agreement and for a period of 2 years thereafter, the Buyer shall not be involved in any way, wether directly or indirectly, wether for consideration or not, in **manufacturing, marketing, selling, promoting, or distributing- hand painted frames for glasses of any kind (made of Plastic or Metal) Worldwide** that resemble and/or compete with the Product.

8.1 It is hereby specifically acknowledged by the Buyer that it does not have, nor will it claim to have any proprietary right, trade rights or copyrights with respect to the Product.

8.2 The Buyer will promote the product only under the Producer's registered trademarks, trade names, logos, labels and other indications of source or origin as may be determined by the Producer from time to time. Currently, the Producer's trade marks and/or trade names consist of: "RONI PLASTIC".

"ART OPTIC", "RONI PLASTIC".

8.3 It is stressed and agreed, that unless otherwise determined by the Producer, during the period of this agreement, the product will be sold, distributed in the U.S.A only under the trademark: "RONI PLASTIC".

9. Notices

Any notice provided pursuant to this agreement shall be in writing and sent by registered mail (return receipt requested), facsimile or e-mail. All notices and other communications shall be deemed to have been received one business day after the date personally delivered, or three business days after mailing by registered mail (return receipt requested).

Said registered mail shall be sent to the address and to the attention of the person named in the agreement.

10. Governing Law

This agreement shall be governed and interpreted solely in accordance with the laws of the State of New York.

Any and all disputes arising between the parties out of or in connection with this agreement shall

interpretation, performance or breach, shall be referred to a binding arbitration before a single arbitrator to be appointed by mutual agreement between the parties and, in the absence of such agreement, within fourteen (14) days from any of the parties first demand, and the arbitrator will be appointed at the request of either party by the chairman of the Israeli bar. The arbitration will be held in Tel-Aviv, Israel. The arbitration shall be conducted in accordance with the provisions of the Israeli Arbitration Law, 1968, the arbitrator shall not be bound by any rules of evidence or procedure, but shall be bound by the substantive of Israeli law. Any award or decision rendered shall be made by means of written opinion explaining the arbitrator's reasons for the award or decision, shall be final and binding upon the parties hereto, and shall be given in 60 days from the appointment of the arbitrator.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first herein written and each party acknowledges having received one counterpart.

Art Dado Ltd.
81 Hazanir St.
Kiryat Ono - ISRAEL

PRODUCER

Art Dado Ltd.

Witness:

BUYER

Art Dado Ltd. (Kiryat Ono, Israel)

נספח ה'

תמוז 1 תשס"ח

ehud

מאת: "sammy toma" <sammy_toma@yahoo.com>
 אל: "ehud" <ehud@op-arm.co.il>
 תאריך: יום חמישי 27 אפריל 2006 13:51
 נושא: Re: Fw: Inventory needed for Chicago

What I am offering you is a better deal!
 You are asking for \$1270 in 8 payments for the old item

I OFFERED A \$3500 IN 4 OR 5 DAYS FROM NOW

I would probably be able to send you more money right after the Chicago show -
 probably the amount of the shipment for frames you will send me for the Chicago show.
 So if you do the calculation, it is a better money arrangement for you.
 within 3 weeks from now you will have receive more money from today than what you are trying to offer me

WHAT DONT YOU UNDERSTAND?

I WILL ONLY AGREE TO C.O.D ON THE DAY THAT YOU WILL KEEP ALL THE INVENTORY IN THE
 WORLD THAT I NEED WHEN I NEED IT
 Seems like that day is very far away from us

in the meantime,

If you were able to ship me exactly what I needed every time I order frames from you, then I would order smaller in it
 more frequent deliveries. I would Probably take delivery every few weeks. That you never keep even inventory in your
 model across the entire line that WE need so desperately. That creates a huge inventory and backorder situation for us
 where we need constant shipments from you. In many instances, like this situation, we order frames we would not order
 normally, because they were not our first priority. Because we are constantly planning out all many styles and colors, but
 the most popular

If I were to sign a new agreement with you, I will not sign it unless I have less guarantees from you that you committed to
 keep constant inventory where I get what I need anytime I need it

But the agreement expired and I have built some experience where you are still honoring our needs and not addressing
 our inventory needs.

So! If you are demanding C.O.D payments because you are trying to build inventory, you are doing them wrong. It is
 wrong, you cannot demand C.O.D. I am saying that we only a few people make what takes us a lot of time to make. We
 have a amount of frames in one style and no more. So we have to make it. This is what we are facing with you. I know
 we will always need more frames because of our customer's back order. With this agreement, you are not keeping C.O.D.
 C.O.D.

All you voice in your emails are complaints

You cannot expect me to satisfy your needs if you are not doing what you are saying. If you are not doing what you
 operation is not met and I am not doing what you are saying. If you are not doing what you are saying, then your
 my actual sales is lacking and so is my

I informed you 6 months ago, but you are still not doing what you are saying. You are still not doing what you are saying.

and keeping in it shows the need for it.

It is not about not doing this or that, it is about doing what you are saying.

It is about feeling secure that we are going to get what we need. It is about feeling secure that we are going to get what we need.
 the time and selling them in big quantities. We are not doing what you are saying. We are not doing what you are saying.

Right now we are selling what you have ordered. We are not doing what you are saying. We are not doing what you are saying.
 we are completely out of it. We are not doing what you are saying. We are not doing what you are saying.
 to not include the most popular ones.

I am need to pay for my need

we are asking for models that we are not doing what you are saying. We are not doing what you are saying.
 production for our forecast of sales.

Also, you ask about a C.O.D. and you are not doing what you are saying. You are not doing what you are saying.
 you have told us we \$150,000. You are not doing what you are saying. You are not doing what you are saying.

I know that I have never paid you for my need. I have never paid you for my need. I have never paid you for my need.
 Not tell me that you are not doing what you are saying. You are not doing what you are saying.

frames.
 I have and I trust that you are not doing what you are saying. You are not doing what you are saying.

Inventory and you are not doing what you are saying. You are not doing what you are saying.
 your need to pay for my need.

9 June 2008

half, and all the frequent payments I have been making to you.
your contract with us expired, we are working with a hand shake trust between us for a long time now

Please address our needs for the 1-10% A/C's show and long term inventory projections for the future and everything else
work out fine

these are the 2 burning issues...

We are working very hard to sell more tractors in the future, so money will not be the issue, that is the only guarantee
can give you

SAM

ehud <ehud@op-art.co.il> wrote

Sammy,

Why do you call my payment terms- BLACKMAIL ?

You signed an agreement stating the terms are 30% with
the forwarding of your order and the 70% balance is C.O.D.

I am willing to improve these terms for you to 100% C.O.D-

Why are you accusing me of BLACKMAIL are you out of your mind ?

If you had not agreed to my payment terms in the contract, you would not
have been our distributor !

You signed an agreement to pay under certain terms and you are
not standing up to it !

I agreed to help you in the first year (and over) I made it very clear
that this help is temporary, until your business can stand on its
own 2 legs, i.e. to pay C.O.D.

I agree now that you will pay your current debt in 8 payments until
the end of the year- 8 months from now- and you call me a blackmailer !

This is completely crazy !

You must understand one thing: I am not making enough money from
the sales I do with you, to justify the credit you demand

Along the way, I have shown that I'm doing everything in my power
to help you build up your business

But when I tell you that I can not continue to keep on
manufacturing the stock you need without the C.O.D. payment terms

IT'S NOT A MATTER OF WANTING TO MAKE MORE PROFIT

If you have 30,000\$ extended in credit to your customers, use this
money to pay for the inventory you need

Sammy, you have a business that is growing and needs more stock
as customers

If you can't afford to participate in it, it's a dead end for you and

for the times you need them show in 3-4 months time

Nothing bad will happen to you if you pay

Please accept my generous offer and pay me 100%

and let's continue to try to build the stock and grow our business
for both of us

Let's stop arguing all the time

You must accept the fact that I am not making enough money to
keep paying C.O.D.

It's not personal, it's not a threat, it's not a demand

It is the simple economic fact

What more can I say to explain this situation ?

Best regards

Ehud

P.S. I don't give and never gave a cent to anyone in the industry

Except a distributor. Not because I'm a nice person, but because I want to

9 11/03 11/03

----- Original Message -----

From: Jimmy Torma

To: Phil

Sent: Wednesday, April 28, 2008 10:32 PM

Subject: Re: Fw: Inventory needed for Chicago

You need to consider our need for the items in CHD AGO and set aside the financial disagreements between us until we come to an understanding.

Your conduct demonstrates that you are determined to put this business relationship ending not backman and force C.O.D terms on us when the CHD AGO shows up bearing.

I will not agree to C.O.D terms ever.

I have over \$50,000 extended on credit to the CHD AGO and much more to come.

You are a direct beneficiary of my credit and personal investment that I made in this business.

The fact that you also extend credit to our customers in the SAM AGO and AMR AGO is a direct benefit to Whatac and does not benefit me or my wife.

That is that I have my own money invested in this business and I am not a beneficiary of my investment in this business.

You will find that I do not respect your laws and regulations and I am not a beneficiary.

The contrary, it will only be a direct benefit to me.

For that you finalize with me the CHD AGO and AMR AGO and I will be a direct beneficiary of the show.

DO NOT DELAY WITH US

It is Pretty clear that you and I have a direct relationship and I am not a beneficiary of my investment in this business.

SAM

chud AGO and AMR AGO

I will be the debt is 10,000

The offer to finance the CHD AGO and AMR AGO and I will be a direct beneficiary of my investment in this business.

As to your request to have a direct relationship with CHD AGO and AMR AGO, I think that Art Optic is a bank and I am not a beneficiary of my investment in this business. I was willing to try to help it but I am not a beneficiary of my investment in this business.

אניח את הנייר

Your unrealistic demands for open credit account with no deadline for payments, lead me to the conclusion that you don't want to work with us anymore. That is your right please put why not say it in simple words.

I expect to receive the \$10,000 as a first payment being as Mary promised in the first week of May.

Best regards,
Ehud

----- Original Message -----

From: Sammy Toma
To: ehud
Sent: Wednesday, April 26, 2006 12:40 AM
Subject: Re: Fw: Inventory needed for Chicago

Your offer in this email has nothing much more different than the previous one and

you offer to stretch the current debt till December and you committed to pay for all the posters and show paper materials.

THAT IS IT

I do not need your one time help with stretching the \$10,000 debt that I owe as a one time gesture.

Actually the debt is now \$9600 since you are paying for the posters that I owe you.

What I need from you as far as inventory and financing is the following:

- A long term help in receiving frames when I need them, namely, you carrying more inventory in general.

- I need a Revolving credit of up to \$70,000 inventory that I receive from you, but I can constantly use to supply customers, that I carry credit terms for with frames and that I will pay on my discretion, but will not go over the \$70,000.

- In general, I will not pay cash for inventory that I receive from you, but I will sometimes sending me frames for no cost.

- I need a partner that will not make any cash payment every time I need inventory. I have 10 years while I have from my partner and I have not made any cash payment for inventory.

SAM

ehud@chudaiop-art.com

Hi Sammy

First, I would like to point out that I have not received any cash from you, but you are not making enough money for paying the delivery, something that you can't say to me when you are making agreements with me, so I will not agree to your terms when we start working together again.

The first 2 shipments were paid by cash, but I have just agreed on. After Dudi left the partnership, he advised me to continue to work with you and together with me, he said that I saw you and Mary are putting all your efforts and means into the business, so I decided to continue the cooperation with you.

Even when I realised that I was not making any cash, but I decided to continue to credit something which is better than not having any cash at all, and therefore

עמוד 5 מתוך 9

makes it very difficult to produce the stock I need to hold for you and my other customers abroad and in Israel.
I decided to continue to supply you with frames- in the belief and hope that I am helping you to build up your business in the first year.
If you remember, in the beginning of 2005 I asked you for your estimation of the yearly turn over and you estimated it to be 8000-10,000 frames.
If that would have proven to be true, I'm sure you could pay for the frames as per your commitment in the contract between us with out difficulty.

However, in actual fact you purchased about 4,500 frames in 2005- which in my opinion is not a bad figure for the first year.
Although in comparison to your estimation it's somewhat disappointing.

Anyway, the fact remains that at the price of 25-26\$ I jeopardize my business if I don't collect the money on delivery.

After giving it a lot of thought, here is my final offer:

- From now on the terms (in actual fact and not only on paper) are full payment of invoice on delivery (c.o.d.)

- Reg the debt of 10,165\$ I understand that it's difficult for you to pay it in 3 payments and at the same time to pay for the new frames. I will let you pay it in 8 payments of 1,270\$ each- with the payment for the 3 next deliveries of frames to you- but the debt must be fully paid until December 31, 2006.

Furthermore, Ronit and I decided that for the shows in future we will cover the costs for all the posters, stickers etc. which are used in the booth.

This offer is more than fair- in the last year you owe me in average over 3,000\$ at all time, and for the current debt I give you a further credit of an average of 4 months- and I hope a practical one.

Is think about it and let me know your decision.

Regards
Shud

From: sammy toma
To: shud
Sent: Tuesday, April 29, 2006 1:10 pm
Subject: Re: Fw: Inventory needed for campaign

I AM NOT MAKING A DEAL WITH YOU. I DON'T WANT TO PAY FOR THE
THE TERMS YOU ARE OFFERING ME.
THAT IS MY ANSWER.
YOU WILL RECEIVE THE MONEY YOU OWED ME FOR THE FRAMES I
BOUGHT IN THE PAST.
IF YOU WANT TO CONTINUE TO WORK WITH ME, YOU WILL HAVE TO
RENEGOTIATE THE TERMS OF MY OFFER.

I AM

shud - shud@opart.com

Hi Meni
For the amount due to me for the frames I bought from you, I will
estimate I have at least 3,000\$ in your account.
I have to wait till the end of the month to get the money.

For the money I owe you for the frames I bought from you, I
expect to be paid for the frames I bought from you in the next
3,500\$ you promised to pay me for the frames I bought from you.

25-06-2006

7/17/08

AFFIDAVIT

I, the undersigned, Cathy Stone, having been duly warned that I must state the truth, or else be subject to penalties under the law, make the following statement in writing:

1. I am the owner and manager of the store "INSIGHT EYEWEAR" on "X" El Dorado St., Monterey, CA 93940.
2. In recent years I have purchased hand painted eyeglass frames, designed by and branded Ronit Furst, from Sammy and Meryl Leishover of Newlight eyewear from New York or the Leishover's.
3. Sometime during September 2006 I contacted the company "Am-Opne Ltd" in Israel which I knew manufactured the Ronit Furst frames ("the company") by e-mail in order to clarify several matters in connection with the frames it produces. In reply to my queries, I received a reply from Melchud Bibring who introduced himself as sales manager of the company "Ehop". Thus a contact was established through which, on 12/20/06, I started talking by telephone.
4. Towards the end of February 2007, I contacted the company "Ehop" by e-mail and asked them to contact Ronit Furst in order to obtain a license for the use of the name of Ronit Furst frames in connection with the frames I purchased from Meryl and Sammy Leishover. I received a reply from Melchud Bibring who informed me that he was not authorized to contact Ronit Furst in connection with the frames I purchased from Meryl and Sammy Leishover. I received a reply from Melchud Bibring who informed me that he was not authorized to contact Ronit Furst in connection with the frames I purchased from Meryl and Sammy Leishover.

they planned on putting the frames on view at the forthcoming exhibition in New-York.

5. Ehud expressed great surprise and concern at this news and said that the Tomashovers are no longer his official representatives in the U.S., and that to the best of his knowledge they did not have enough frames to justify a "special sale" nor to take part in the exhibition in New-York.
- Therefore, Ehud asked me to "keep an eye" on what they were up to and to see what sort of frames the Tomashovers would put out on exhibition.
6. On 03.10.07 a special sale did indeed take place in my store. The Tomashovers arrived at the store with a selection of frames which looked exactly like the Ronit First colorful hand painted frames including the Ronit First stamped signature on the outside left temple of each frame. However, I did notice something significant about the frames they presented: in contrast to the Ronit First frames I had stocked up until that time where the color code number was always PIN 110101 MY FIRST at the bottom of the inside right temple. In the frame they presented in the "special sale" the color code number was PINKY 11 and situated on the upper inside right temple.
7. Furthermore, the color code numbers of the frames I had stocked up until now are in connection with the original design of the frames stamped by Ronit First. I stated that while the color code number PINKY 11 may have been stamped on the frame, it is not the original design of the frame and therefore it is not a Ronit First frame. She also told me that she had never heard of such a color code number before. I told her that I had seen the color code number PINKY 11 on the frames of the Tomashovers and that I had bought one of them myself. She told me that she had never seen or heard of anyone buying a frame from the Tomashovers and that she had never seen or heard of anyone selling a frame to the Tomashovers. I told her that I had seen the color code number PINKY 11 on the frames of the Tomashovers and that I had bought one of them myself. She told me that she had never seen or heard of anyone buying a frame from the Tomashovers and that she had never seen or heard of anyone selling a frame to the Tomashovers.

To clarify this I ordered a few frames from the Tomashovers.

On March 12th I wrote to Emily: I had not turning him on the above

8. On March the 16th, just 6 days after the "special sale" I received the frames I ordered. They were counterfeits of the Ronit Furst frames but I could see that the color code number was PRINTED and not HAND PAINTED like in the original frames.

All of the frames had the Ronit Furst signature stamped on the outside left temple-exactly like in the original frames.

Attached is a copy of the invoice with the list of frames ordered during the sale and supplied by the Tomashovers (attachment V).

9. As per Lind's request, I sent to Lind the frames supplied to me by the Tomashovers. A photo of the frames I sent is attached (in blue) (attachment B).

10. I declare this to be my name and signature, and my above statement to be the truth.



Emily Shor

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Monterey

On 7/9/07

at San Jose, CA

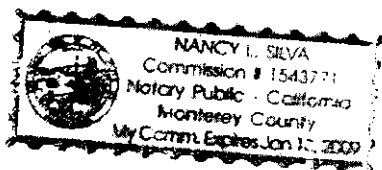
Nancy L. Silva

personally appeared

Cathy Saxe

personally known to the

Notary Public, I have seen satisfactory evidence to be the person or persons who have signed the foregoing instrument and acknowledged to me that he/she/they executed the same as his/her/their authorized representative(s) and that he/she/they were signing voluntarily and in full knowledge of the contents of the instrument and of the consequences of the same.



WITNESSES, and a Notary Public

OPTIONAL

Description of Attached Document

Title of Document Power of Attorney

Document Date 7-9-07

Capacity/ies Claimed by Signer

Signature Nancy L. Silva

Capacity Principal

Signature Cathy Saxe

Capacity Agent

Signature [Signature]

Capacity [Capacity]

Signature [Signature]

Capacity [Capacity]

Signature [Signature]

Capacity [Capacity]

Signature [Signature]

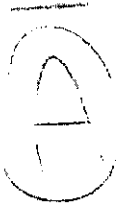
Capacity [Capacity]

Signature [Signature]

Capacity [Capacity]

Signature [Signature]

Capacity [Capacity]



NEWLIGHT EYEWEAR

444 EAST 75TH STREET

SUITE 17C

NY, NY 10021

917-859-5212/212-288-5827

invoice

Date: 3/2/2007 Invoice #: 0014

EN TS

INSIDE EYEWEAR
CATHY SHUF
187 EL DORADO STREET
MONTEREY, CA 93940

Ship To

INSIGHT EYEWEAR
CATHY SHUE
187 EL DORADO STREET
MONTEREY CA 93940

[illegible]

Total

נפח ב'



כספה

AFFIDAVIT

I, the undersigned, Ruth H. Donner, having been duly sworn, deposes and says under the penalties for perjury as follows:

1. I am one of the owners of the optical store DBA 10/10 Optics at 168 Fifth Avenue at 22nd street, New York, N.Y. 10010. (We are relocating this business to 50 Madison Avenue as this time), and have been so for the last 12 years.
2. Since 2003 I have been purchasing from the firm Art Optic Ltd (the Company) hand painted eyeglass frames designed by RONIT FURST. My contact with the above company is handled through Mr. Ehud Bibring ("Ehud").
3. I had been introduced to SAMMY TOMASHOVER and his wife MERYI as the United States representative of The Company. I am also aware that the relationship between The Company and The Tomashover's had been terminated.
4. On 3/22/07 Ehud contacted me and told me that he suspects that the Tomashover's are imitating the frames his company produces and he further suspects that the Tomashover's sell these imitation frames to various stores in the U.S. Ehud added that according to his information the Tomashover's are participating in the then forthcoming 6480% U.S. tax opt-out rate. I contacted the Tomashover's and suggested that Tomashover's stand and clear out the situation.
5. I complied with the request to contact Sammy Tomashover and to the exhibitor.
6. I immediately sought legal counsel and contacted the attorney who was in touch with the Tomashover's. The attorney advised me to terminate the

by the the outstanding colorful posters and background paperwork well known to me from the Ronit Furst stand a year ago- in the Vision Expo 2006. I also saw the red Ronit Furst brochures, which I received about a year ago from Ehud and Ronit Furst business cards which were being distributed at the booth. To my amazement, I noticed on display hundreds of eyeglasses frames which appeared to be an exact replica of the Ronit Furst frames, including the Ronit Furst signature stamped on the outside left temple of each frame. This surprised me since I was aware that the Tomashover's were no longer authorized to represent the brand.

7. Upon my arrival to the stand I noticed that Meryl Tomashover recognized me-she signaled nastily to her husband to come quickly. I tried to enter into conversation with Mr. Tomashover, but he raised his voice at me and asked me to leave the stand. I left the stand and took pictures of the stand from a distance (they are attached as part of this affidavit).
8. I went on my way looking at various exhibitor stands when after a few minutes I was surprisingly approached by Mr. Tomashover, who told me that we can do business together and that he can supply me with Ronit Furst frames directly provided I refrain from telling Ehud what I saw.
9. When I refused the offer Tomashover turned to being aggressive, he threatened me, badmouthed Ehud, and shouted at me in front of passers by that I was a spy, that I was a bad person and that I was a bad person. I left the stand at the time.

Sworn before me this 2nd day of February, 2008.

Notary Public

Viviana Dixon
Notary Public, State of New York
No. 01D16148902
Qualified in Queens County
Commission Expires May 30, 2013

נספח 7

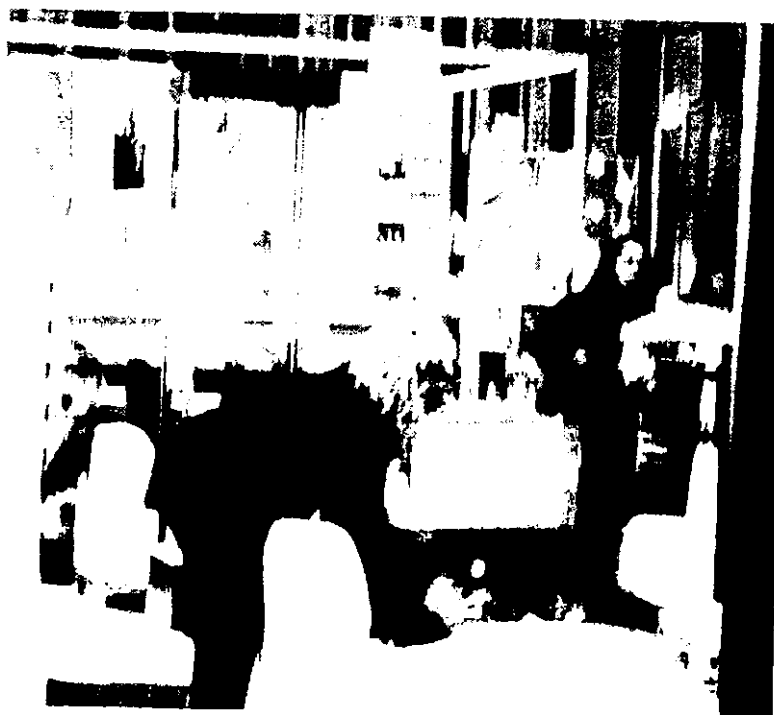


EXHIBIT E

- 1 -

District Court
Tel Aviv Jaffa

Civil File No. 1661/07
MCA 9267/07
Set for Closing Arguments
Before the Honorable Judge Y. Zapt

Art Optic Ltd.
Private Co. Reg. No. 51-319114-8

By its attorneys, Advocates Ganihar et al
12 David Hamelech Blvd., Tel Aviv 64953
Tel.: 03-6968965; Fax: 03-6969781

Applicant
(Plaintiff)

Vs.

- 1. Samuel Tomshucher**
- 2. Meryl Tomshucher**

By their attorneys, Advocates Arie Lahav-Levy and/or
Doron Shimoni
9, Achad Ha'am Street, P.O.B. 29557, Tel Aviv 61294
Tel.: 03-7979993; Fax: 03-7979997

Respondents:
(Defendants)

Written Closing Arguments on behalf of the **Respondents**

Pursuant to the decision of the Honorable Court dated September 20, 2007, the Respondents respectfully submit, via their attorneys, their written closing arguments within the motion for an interim injunction which the Applicant submitted in the MCA at the outset, as follows:

1. In view of the quota limitation determined by the Court in respect of these closing arguments, the Respondents will not waste precious writing space with a view to referring to the bluntness and coarse language used by the Applicant and its attorneys in their closing arguments, just as at the court hearing. On the

other hand, in these closing arguments the Respondents will most definitely rectify the legal errors (so termed out of courtesy alone), which occurred in the Applicant's closing arguments and claims.

2. The Applicant has two claims in respect of which, it seeks an interim injunction barring the Respondents from selling glasses frames manufactured by it: A contractual claim relying on clause 7 of the distribution agreement between the parties and another claim, under law, to the effect that acts of counterfeiting and fraud are attributed to the Respondents.
3. For a person to be granted an interim relief of the type sought by the Applicant he must satisfy several preliminary statutory requirements, some of which are clearly and expressly reflected in the Civil Procedure Regulations (hereinafter: the "**Regulations**"), some drawn from the law of equity governing this type of remedies, and some from Israeli case law.
4. Pursuant to Regulation 362 of the Regulations, to obtain an interim relief, the Applicant has to present to the court a reliable evidentiary foundation, showing, *prima facie*, the existence of a cause of action, and the other unique conditions required for the type of the interim relief sought, at which time the court will consider granting the relief sought, *inter alia*, taking account of the parties' balance of convenience, considering the extent of the Applicant's good faith, and whether the grant of the relief sought is just and appropriate under the circumstances.
5. In the present case, it appears that the Court's work is particularly easy, since the Applicant has failed to show even a shred of *prima facie* reliable evidentiary foundation as to the existence of a cause of action against the Respondents. Moreover, the Applicant certainly cannot boast with claims of good faith or that the grant of the relief sought is just and appropriate under the particular circumstances.
6. **Concerning the contractual claim** – The Applicant claims in its original motion for an interim injunction, that the exclusive agency agreement with the Respondents was terminated **at the end of 2005** (See: section 6 of the motion).
7. Accordingly, the force of a non-competition stipulation – for a period of two years – expires at the latest, in another two months – in December 2007. The Respondents claim that in its closing arguments, without limitation to the

foregoing, the Applicant extended its legal claims, when it embraced the Respondents' claim as to the date of termination of the contractual term. In its closing arguments the Applicant attempted, without legitimacy, to turn the illegitimate addition of new legal claims on its part into an axe to grind – with a view to claiming that the non-competition stipulation terminates only at the end of 2008. **In this context the Respondents express their determined objection and request the Court to ignore this illicit extension of legal claims.**

8. Furthermore, the Applicant failed to act to enforce the non-competition stipulation on the date of the termination of the agreement, at the end of 2005. Rather, the Applicant “remembered” the existence of the non-competition stipulation only **at the end of the first quarter of 2007**, when the proceedings in this case were instituted.
9. Even then, the Applicant was in no hurry, **and the Court found no ground for granting to the Applicant an injunction *ex parte***, so that the case was finally heard only **at the end of September 2007**.
10. **In these circumstances the Applicant can most certainly be deemed to be in delay, to have failed to safeguard its rights, thereby waiving, by its conduct, the enforcement of the stipulation. On this ground alone the non-competition stipulation cannot be enforced on the Respondents at present.**
11. The Respondents further claim that there is no reason to enforce a non-competition stipulation where the enforcement thereof is dependent on prior performance of acts and procedures on the part of the Applicant, as opposed to the Applicant's baseless claim in section 11 of its closing arguments, as though the subject is a concurrent stipulation. This means performance of everything stated in clause 5 of the contractual agreement between the parties, including the grant of a right of first refusal to the Respondents prior to their replacement by another distributor or agent (while today the Applicant has a distributor by the name of Barry), as well as the purchase of the entire inventory of frames in the Respondents' possession.
12. The Applicants failed to uphold the provisions of clause 5 of the distribution agreement. The Applicant goes even farther with its feigned innocence, claiming that the Respondents never applied to it in this context, which is not

only factually inaccurate, since the Respondents did apply to it, demanding the right of first refusal, but it also lacks any legal basis, in view of the contents of the agreement which imposes an active duty on the Applicant (The producer... will have to purchase). Subsequently it is also stated as follows:

“PRIOR TO TERMINATION OF THIS CONTRACT” .Furthermore, in view of the obligation of good faith imposed on a party to a contract pursuant to section 39 of the Contracts Law (General Part), 5733 – 1973; that is to say that not only was the active duty to offer to purchase the inventory and to grant the right of first refusal imposed on the Applicant exclusively, but this also falls in line with the provisions of the Contracts Law, imposing and determining a duty of good faith also in the course of the performance of a contract – the duty to uphold the Applicant’s obligations before insisting on its own rights under clause 7 of the agreement. On this ground too non-competition should not be enforced.

13. Neither does examination of the stipulation itself shed positive light on the Applicant, since the true purpose of the stipulation is unclear. It is also unclear what this stipulation strives to protect, apart from the “value” of non-competition as such.
14. Pursuant to the prevalent rule, to enforce a non-competition stipulation, the stipulation and the purpose it strives to serve should be examined. The considerations for accepting a non-competition stipulation are as follows: The requirement to uphold agreements as such, and the need to protect the party seeking the stipulation from competition on the part of the party required not to compete, since, for instance, the party seeking non-competition has invested in training, created the pool of customers and exposed the party in respect of whom it is sought to enforce the stipulation, to its trade secrets. It should be clarified even at this stage, that none of these considerations is satisfied in the present case. Concerning the upholding of an agreement, the Applicant is barred from seeking to enforce an agreement which it itself breached (failure to uphold the provisions of clause 5); it has not been argued that the Applicant invested in training the Respondents; it has not been argued that the Applicant gave or exposed its customers to the Respondents (the opposite is true – it excluded several customers from the agreement – see clause 2 of the agreement); nor has it been argued that the Applicant shared with the Respondents its trade secrets.

15. On the other hand, the considerations for not enforcing a non-competition stipulation are as follows: Excessive and unconstitutional restriction of the freedom of occupation (a basic right which, for some reason, appears to be regarded by the Applicant's attorneys as a "rusty weapon" – see section 13 of the Applicant's response to the Respondents' response), the consideration of enhancing the freedom of occupation with a view to improving and perfecting the market, and the last consideration is protection of the party against whom it is sought to enforce the stipulation, assuming that the author of the agreement, as in the present case, is the strong party or the party having the power to dictate stipulations of this type.
16. In the past it has been established that, as a rule, a non-competition stipulation is reasonable and valid where it is fair to both parties. With the variability of legal reality, the test at present is two-phased: First the protected interests of the party seeking the enforcement will be examined. If such interests are found, the second examination will be conducted, which is whether the extent of the limitation is lawful. If it is already found in the first test that there is no protected interest for the party seeking the enforcement, then the stipulation will be nullified due to its being in contravention of the public policy. **A "bare" non-competition undertaking which does not protect the interests of the party seeking the enforcement beyond the non-competition interest in itself (such as the interest of protecting trade secrets and list of customers) does not form a legitimate interest and should be nullified.**

See: Civil Appeal 6601/96 *Aes Systems Inc. vs. Saar* *P.D.* 54 (3) 850, 860.

See: Civil Appeal 164/99 *Frumer vs. Check Point Redguard Ltd.* *PDA* 34 264, 312.
17. If the first test shows that there is a legitimate interest that should be protected for the party seeking the enforcement, then the proportionality of the stipulation will be examined against the duration of the stipulation, the place where it applies and the type of activity to be limited.
18. **And from the general to the specific** – In the present case there is no dispute that there is no reason to enforce the stipulation on the ground that the Applicant is not capable of even passing the first of the two tests referred to above. The Applicant failed to present to the Court any sign of its legitimate interest to be protected by means of the non-competition stipulation. Thus, no

claims were made by the Applicant concerning the existence of trade secrets which it disclosed to the Respondents and which the stipulation strives to protect at present; likewise, it was not claimed that the Applicant exposed its customers to the Respondents; if anything, the opposite is true. The Respondents were hired from the outset to expand and enhance its clientele and it was them that created the pool of customers; there is also no claim that the Applicant trained or financed the training of the Respondents. It hence follows from all the foregoing that the purpose of the non-competition stipulation is not to protect the Applicant's legitimate defensible interests and that in fact this is a "bare" non-competition undertaking having no other purpose **but non-competition *per se***.

19. Under these circumstances, the test can certainly be discontinued, since, in view of the above case law, this non-competition stipulation is in contravention of public policy and, accordingly, on this ground alone, should be nullified. For the sake of prudence, we also apply the second test. The duration of the stipulation is excessive on any scale, since the duration of the stipulation does not fall in line with the current legal reality which enforces non-competition stipulations, where it does, for very short periods, of a few months only. In the present case the duration and reasonableness of the non-competition should also be examined in respect of the duration of the entire contractual engagement, which, according to the Applicant, was one year. Hence, to enforce a non-competition stipulation for a period of time which is double the entire engagement is extremely unreasonable. This is further intensified where the examination of another distribution agreement of the Applicant shows a non-competition stipulation for a similar period (two years) but where the term of the distribution agreement is for 7 years (!) and not one year as in the present case. A distribution agreement for Canada is attached hereto.
20. Examination of the place where it is sought to enforce the stipulation – "worldwide" – sharpens the unreasonableness and the Draconian nature of this stipulation. This also shows that the order sought is sweeping and general. For this reason as well, the motion should not be accepted.
21. The stipulation, which is written in a sweeping and general manner, reaches a particularly negative peak when stating that the Respondents are barred from engaging in any activity relating to hand-painted frames. And it should be

clarified that these are not the Applicant's frames which are protected by copyright laws, respecting which rights the Respondents have no dispute subject to fulfillment of the provisions of clause 5 of the agreement, but any activity relating to hand-painted frames (!) irrespective and without considering the question of whether or not the other hand-painted frames are protected works of an artist or any other entity. To be entitled to such a right, the Applicant has to be the owner of the rights in all hand-painted frames anywhere in the world, by any manufacturer. Apparently, not only that there is no basis for this, but also the Applicant itself does not make such a claim. Why then, should the Respondents be limited so drastically? The answer is fairly simple – the Applicant, for its own reasons, decided to terminate the Respondents in business terms, to take over their customers and their marketing channels, over which the Respondents have labored and in which they have invested with a view to enhancing the Applicant's tiny market share and scope in the field of glasses frames.

22. In contrast to the image which the Applicant attempts to create for itself as a multinational company, with enormous turnover all over the world, it is actually an entity on the verge of transience, which purchases standard frames from an unknown manufacturer in China, which in turn are painted by 3-4 "artists" working in a *quasi* workshop in Israel, and are then marketed to stores in Israel in small quantities, while large parts of the merchandise are returned to the Applicant due to the multiple breaks in the frames, and especially due to significant peeling of the paint. This sums up the Applicant's "glory".
23. It accordingly transpires from the foregoing, also in terms of the duration of the stipulation, its proportionality and its reasonableness, that there is no reason to enforce the non-competition stipulation from the contractual aspect and hence the claim should be denied in this context.
24. **Concerning the claim of counterfeit** – Where it is found that there is no reason or basis for the enforcement of the stipulation from the contractual perspective, then the Respondents' task in warding off the counterfeit claims against them, which claims are groundless and have no basis, is all the more easier since **the Applicant has presented no real evidence or even *prima facie* evidence to prove its claims that the Respondents are "counterfeiters"**. All that the Applicant has in its possession is an affidavit by

one, Ehud Bibring, a person who can hardly be regarded as a reliable person, in view of his problematic financial conduct which resulted in enormous debts, due to which he is currently in the midst of bankruptcy proceedings (Bankruptcy 7719 9126/03) From his testimony, nothing can be drawn which connects the Respondents with counterfeiting of the Applicant's frames which are protected under copyright. Even in his examination at the court, in answer to a direct question, he responded that all that he has in this context had been disclosed to him by entities in the United States, who did not take the trouble to come to the Court in order to give testimony and be examined. Hence, should we add to this, the fact that if the statements of the above were completely removed from the evidence in the court file, then at the end of the day, all that the Applicant is left with is casual testimony of one "Bibring".

25. The Respondents are aware that within the framework of interim proceedings hearsay testimony can also be heard, provided that the source of the testimony is indicated. However, obviously, the court would not be satisfied, in terms of the evidentiary foundation, to take the word of a solitary witness and the court will not decide the matter solely on the basis of such testimony, particularly where this involves an interested and non-objective witness of the type of Bibring. In such event, the Court should search for and seek additional evidence, to substantiate and strengthen the witness' testimony, and in the absence of such evidence, it should deny the motion. An established, well rooted rule in case law, is that a litigant's refraining from bringing a witness whose testimony can support his version, acts against the litigant.
26. In the present case, even after we have thoroughly reviewed all the material, we have found nothing, not even a shred of anything, in substantiation of Bibring's claims which are attributable to the Respondents. First and foremost, as already stated, the little that the Applicant had, in the form of First's affidavit and two other documents appearing to be affidavits, were removed at the outset of the hearing; the Applicant claimed that the Respondent's stand was photographed during the exhibition that was held when they sold counterfeited frames; however, a review of the photographs attached as Appendix F to the statement of claim **does not show** that the photographed objects are the Respondents or any of them, or that this is indeed their stand or that there are counterfeited frames there or that it has any connection with either the Applicant or the Respondents, or that it was

photographed at the alleged exhibition. If so, on what basis was the allegation made? The answer to this question rests with the Applicant.

27. The attempt to rely on First's affidavit (which, as may be recalled, was withdrawn) is also not serious. After all, how can evidence which does not exist at all in the file be relied on? Moreover, even had there been any evidence, no glasses from this store were presented. All that is stated in First's affidavit is that the subject is a couple who sold counterfeited glasses – without any connection whatsoever with the Respondents. Bibring, who was confronted with this issue in his examination, failed to give a pertinent or serious answer to this question and reiterated the worn out and familiar mantra (See: Transcript, p. 2 at the bottom).
28. In these circumstances, the question to be asked is this: if indeed we are dealing with “counterfeiters”, why is it that, to this very day, no charges were pressed with the police against the Respondents, either in Israel or in the United States?
29. Accordingly, it transpires from the foregoing that the Applicant has no evidence, not to mention “*prima facie* reliable evidence” in substantiation of its claims and for it to be entitled to receive an injunction against the Respondents. When a case deals with claims of counterfeiting or fraud, the party making such claims is subject to an enhanced duty of proof. Needless to say, the Applicant failed to meet this burden, and was not even close to doing so.
30. Not only does the Applicant have no evidence to substantiate its claims, but it also decided to withdraw the little that it did present without any explanation at the outset of the hearing, which carries evidentiary significance against it. Namely, the meager evidence from the outset, which is reflected, *inter alia*, in the casual statements that have no basis, as well as the failure to bring to the stand the relevant litigants themselves, just as the refraining from bringing the evidence and witnesses subsequently during the hearing on the merit, strengthens the evidentiary presumption, to the effect that: A litigant is presumed not to fail to present to the court any evidence which is in his favor, and where he refrains from presenting evidence in his possession without any plausible explanation, it can be deducted that had the evidence been presented it would have acted against him.

See: Civil Appeal 2275/90 **Lima Israel Chemical Industries Company Ltd. vs. Peretz Rosenberg et al**, PD 47 (2) 605.

See: Y. Kedmi, **On Evidence (Third Part) Law As Reflected in Case Law**, combined and up-to-date version 2003, p. 1648 onward.

31. Accordingly, it transpires from all the foregoing that the Applicant failed not only in actually failing to present evidence to prove and substantiate its claims, but also, the little that it did bring was withdrawn by it, thus putting itself in a particularly problematic situation from the legal and evidentiary points of view. Therefore, also on all the grounds specified above, there is no reason to hear the claims of counterfeiting and certainly not to issue an order on the basis of this “cause of action”.
32. Before concluding, the Respondents wish to refer briefly to the contents of the Applicant’s closing arguments, as follows: As to the claim that Respondent 1 “admitted” the sale of frames in Virginia, this is not sufficient to serve as evidence for anything but the Respondents’ efforts to dispose of the inventory of the original frames in their possession; since the Applicant failed to uphold its duty to purchase such frames from them, they explored all the points where the merchandise was sold, including Virginia. However, this is a long way off from actually admitting to a sale for the purpose of selling counterfeit frames. Besides, what merchant would purchase counterfeit frames knowing that they are counterfeit where the distinctive marks are so conspicuous?
33. The biggest nonsense heard within the framework of the Applicant’s arguments is the claim that since what distinguishes an original frame from a counterfeit one is the manner of marking the details of the model on the glasses frame/handle, then any handle of glass with no handwritten text is counterfeit. Since the frame that was presented is counterfeit, then the “counterfeiters” are the Respondents. If this is indeed so, then the Respondents would be complete idiots not to manufacture “counterfeit” frames which do not imitate the above feature. If anything, the very existence of the frames that were presented, testifies as a thousand witnesses, that the Respondents did not commit any wrong, since the Respondents, as an exclusive agent, were aware of the feature, and hence only those who do not share the knowledge of the feature can counterfeit the frames so clumsily. Had

the Respondents been the counterfeiters, they would have surely attended to this matter.

34. In view of the restricted nature of these closing arguments, the Respondents reiterate everything stated in their response to the Applicant's motion for injunction, so that they will not appear to have abandoned these claims; however, it appears that in view of the core of the matter in dispute it would be just and appropriate to focus the hearing and the arguments on the analysis of the legal situation directly relating to the Applicant's motion.
35. In view of all the foregoing, the Court is hereby requested to deny the Applicant's motion for an interim injunction against the Respondents, and to charge the Applicant with court costs and lawyer's fee plus applicable VAT in connection with this motion.

Arie Lahav-Levy, Advocate

Doron Shimoni, Advocate
Attorneys for Respondents

EXHIBIT F



Form No. 312/2007

CERTIFICATION OF TRANSLATION

I the undersigned Advocate

Reuven Ben-Ari

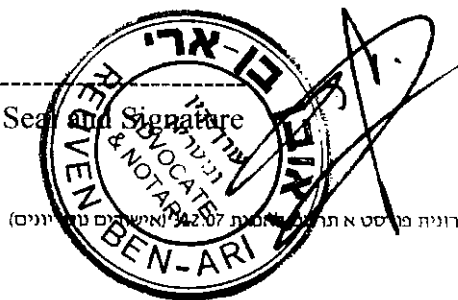
Notary at 14, Massaryk blvd. Tel-Aviv Israel hereby declare that I am well acquainted with the Hebrew and English languages and that the document attached to this certification and marked "A" is a correct translation into English of the original document drawn up in the Hebrew language, which has been produced to me, and a copy of which is also attached herewith and marked "B".

In witness whereof I certify the correctness of the said translation by my signature and seal.

This 10th October 2007

Notary's fee 1,698.- NIS. including V.A.T

Notary's Seal and Signature



רונית פריסט א תרגום מסמך 312/07 (אישורים נוספים)

מס' רץ 312/2007

אישור תרגום

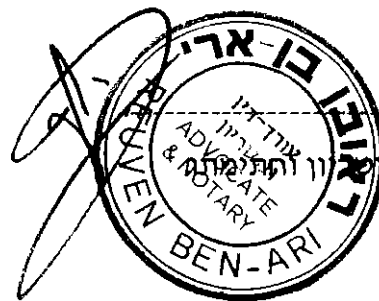
אני הח"מ עו"ד רעובן בן-ארי

נוטריון ב- שד' מסריק 14, תל-אביב מזהיר בזה, כי אני שולט היטב בשפות העברית והאנגלית וכי המסמך המצורף לאישור זה והמסומן "A" הוא תרגום מדויק לאנגלית של המסמך מקורי הערוך בשפה העברית שהוצג לפני ואשר העתק צילומי שלו מצורף גם הוא לאישורי זה ומסומן "B".

ולראיה אני מאשר את דיוק התרגום האמור בחתימת ידי ובחותמי.

היום 10.10.07

שכרי בסך - 1698 ש"ח כולל מ.ע.מ. נדרש.



חותם המסמך

APOSTILLE
(Convention de la Haye du 5 October 1961)

1. STATE OF ISRAEL
This public document

2. Has been signed by
Advocate

3. acting in capacity of Notary.

4. bears the seal/stamp of the above Notary

Certified

5. at the Magistrates' Court, Tel-Aviv-Yafo

6. Date 11-10-2007

7. By an official appointed by Minister of Justice under the Notaries Law, 1976.

8. Serial number 251062

9. Seal/Stamp 

10. Signature 

1. מדינת ישראל
מסמך ציבורי זה

2. נחתם בידי
עו"ד.

3. המכהן בתור נוטריון.

4. נושא את החותם/החותמת של הנוטריון הנ"ל
אושר

5. בבית המשפט השלום תל-אביב-יפו

6. ביום 11-10-2007

7. על ידי מי שמונה בידי שר המשפטים לפי חוק הנוטריונים, התשל"ו-1976.

8. מס' סידורי

9. החותם/החותמת

10. חתימה

State of Israel
The Courts of Law

At the Tel-Aviv – Jaffa District Court

Civil motion 009267/07

Principal Case A 001661/07

Before His Honor Judge Yehuda Zaft - Vice President

In the matter of ART – Optic Ltd.

Represented by Counsel, advocate Uriel Ganiar The Petitioner

V e r s u s

1. Samuel Tomshover

2. Merill Tomshover

Represented by Counsel, advocate Arie Lahav-Levy The Respondents

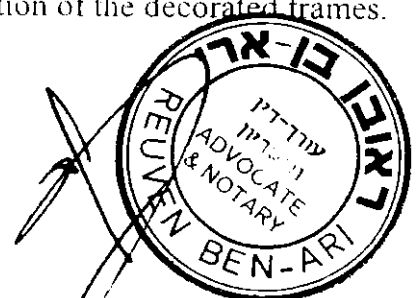
Ruling

Background

On October 1, 2004 the Petitioner, engaged in the production and marketing of spectacle frames made of plastic, decorated by handwork (“the decorated frames”) made a distribution agreement with the respondents whereby the respondents were to serve as sole distributors of the decorated frames in the USA in the period between December 1, 2004 and December 31, 2005 ((hereinafter: the distribution agreement)).

A dispute about the distribution of the decorated framers erupted between the petitioner and the respondents and from 2006 onward the petitioner ceased to provide the respondents with decorated frames.

According to the petitioner, the respondents are engaged in the USA in the marketing of spectacle frames that constitute an imitation of the decorated frames.



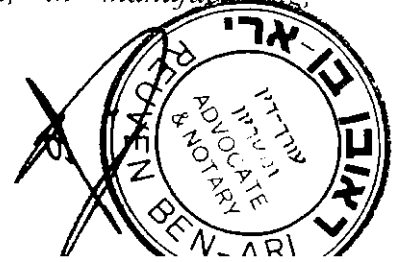
In civil file 1661/07 the petitioner sought a declaratory ruling banning the respondents from producing or marketing frames that are similar to or competing with the decorated frames over a period of two years from September 30, 2006 – the final date on which the petitioner supplied the respondents with decorated spectacles. The petitioner also applied for a ruling banning the respondents from making and/or selling frames bearing the name “Ronit Furst”, “Op-Art”, or “Art Optic”, or purporting to be frames manufactured by the petitioner and/or designed by Ronit Furst and/or being passed off as distributors and/or representatives of the petitioner.

In the petition before me, the petitioner requests a temporary injunction banning the respondents from manufacturing and/or marketing and/or distributing and/or selling spectacle frames painted by hand, and also from making and/or selling and/or displaying anywhere in the world spectacle frames bearing the name “Ronit Furst”, “Op-Art”, or “Art Optic” or frames purporting to be made or designed by the petitioner.

Discussion

- A. The petitioner bases its right to the sought relief on the provisions of clause 7 of the distribution agreement, which bans the respondents from engaging in production and/or marketing of hand-painted spectacle frames resembling the decorated frames and/or competing with them during the currency of the agreement for a period of two years thereafter. Clause 7 of the distribution agreement (Appendix B) stipulates:

During the term of this agreement and for a period of 2 years thereafter, the Buyer shall not be involved in any way, whether directly or indirectly, whether for consideration or not, in manufacturing,



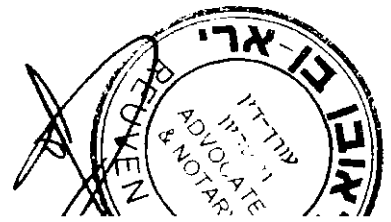
marketing, selling, promoting or distributing hand painted frames for glasses of any kind (made of plastic or metal) worldwide that resemble and/or compete with the product”.

According to the petitioner, the period of restricted competition is to be counted from December 31, 2006 because according to the respondents' version they served till then as sole agents of the petitioner.

Owing to the grant of a two years sole distribution rights in the USA to the respondents it is possible that their restriction of business constitutes no disproportionate impairment of their right of conducting business. Even in this case, however, the restriction period expressly established in the agreement should not be extended. Since it is established that the distribution agreement is to be valid till December 31, 2005 (clause 3 of the agreement), the restriction period is to be counted for two years starting on that date.

Moreover, the delivery of decorated frames to the respondents in the period after December 31, 2005 took place in conditions different from those established in the distribution agreement and during that period the respondents were denied the exclusivity of distribution in the USA (article 10 of the affidavit by Ehud Biberig of April 26, 2007).

- B. The petitioner is applying for a temporary injunction banning the respondents from competing with it for an indefinite period whereas it was entitled at most to prevent the respondents from marketing competing glasses with decorated frames till December 31, 2007. Therefore, I see no justification for accepting this request, which was intended to prevent the respondents from competing with the petitioner.



- C. It follows from the affidavit by Ehud Biberling that on March 10, 2007 the respondents displayed in the optical store in Monterey spectacle frames similar to the decorated frames (article 10.1 of the affidavit). This statement was given on the basis of the version of Kathy Show, owner of the Monterey store, who even handed over to the petitioner frames purchased by her from the respondents.

Samuel Tomshover testified as follows (p. 3 of the protocol of September 20, 2007:

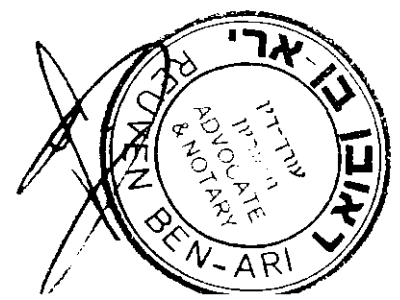
Q. About the deposition by Kathy Show, did you appear in her place and sell her frames?

A. Yes.

The testimony of Samuel Tomshover supports the version of Kathy Shaw, as given to Ehud. Biberling.

Comparison between the frames sold to Kathy Shaw by the respondents and the decorated frames (Exhibit 2) reveals that the frames sold by the respondents to Kathy Shaw comprise decorative elements and model signs identical to those existing in the decorated frames, among other things they contained the *Ronit Furst* sign, which characterizes the decorated frames. Therefore it appears prima facie that there is a misleading similareity between the frames sold by the respondents to Kathy Shaw and the decorated frames.

- D. The respondents agreed in their reply to obtain a temporary injunction banning them from distributing forged frames (clause 90 of the respondents' reply of July 22, 2007), and on these grounds I think it



would be justified to hand down a temporary injunction banning the respondents from further marketing of frames that constitute a forgery of the decorated ones.

Conclusion

A temporary injunction is hereby granted, banning the respondents and/or any person on their behalf from making and/or marketing and/or selling spectacle frames that constitute an imitation of the decorated frames made by the petitioner with the inscription "Ronit Furst", "Op-Art", or "Art Optic" as shown in Appendix A of the Petition.

The validity of this temporary injunction is conditional upon the deposition of a personal undertaking pursuant to Regulation 365(B) of the Civil Procedure Regulations, 5744-1984.

In view of the respondents' consent to the said order I see no need for making the temporary injunction conditional upon the deposition of a guarantee.

The respondents shall jointly and severally pay the petitioner the costs of the petition and attorney fee in the sum of NIS 20,000.

The court secretariat shall issue a copy of this ruling to the counsel of the parties by fax.

Issued on October 9, 2007, in Chambers.

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Judge Yehuda Zafi, Vice President

